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REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE ORDER INSTITUTING RULEMAKING ON TELECOMMUNICATIONS PUBLIC POLICY PROGRAMS

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Division of Ratepayer Advocates ("DRA") respectfully responds to the comments of other parties on the Order Instituting Rulemaking ("OIR") on the Public Policy Programs (PPPs). As we stated in our Comments, we anticipated that our recommendations might be modified based upon our analysis of others Comments, and some of our recommendations have indeed been modified. As was the case with our Comments, our analysis of other parties' Comments was guided by the principles articulated on pages 1-2 of our Comments (in the interest of brevity, we will not repeat them here).

II. FUNDING MECHANISM

A. The record reflects that the current surcharge mechanism is currently suitable

Many parties observed, as did DRA, that the funding base is viable and that there is no current program pressure on the funds such that their adequacy is jeopardized.[1] For example, The Utility Reform Action Network and the National Consumer Law Center ("TURN/NCLC") state that the interstate revenues are in fact stable if not growing and there is no reason to believe that intrastate revenue data are any different.[2] As they point out, the current mechanism should be maintained. Fones4All stated that "in the absence of any empirical evidence suggesting the contribution base has been or will begin eroding, …the adoption of a replacement funding mechanism in this proceeding is both premature and wholly unnecessary."[3] Even AT&T acknowledged that the end-user surcharge mechanism is "*currently* a suitable mechanism" for funding the public policy programs because it is consistent with the FCC's revenue-based system – and should not be modified until changes are made at the FCC.[4]

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[1] DRA Comments at 9-10.

[2] TURN/NCLC Comments at 4-5.

[3] Fones4All Comments at 4.

[4] See AT&T Comments at 38 (emphasis added).

In addition to the fact that the current mechanism is viable, DRA and other parties support the surcharge mechanism because it is more equitable than any proposed alternatives. Indeed, Cricket Communications states that the current surcharge mechanism is "equitable and preferable" to a connections-based mechanism, explaining that a flat-fee approach may be regressive.[5] Similarly, TURN/ NCLC states that the existing surcharge mechanism is not regressive, but a numbers-based methodology may result in the residential consumer paying an unreasonable share of universal service costs.[6] Fones4All observes that the proposals for numbers-based mechanisms could result in "underfunding the program and worse yet, imposing a regressive tax on ratepayers."[7]

Among the parties that flatly oppose support for the current mechanism, Verizon claims that the end-user surcharge mechanism is not suitable because it is not competitively neutral and is inequitable.[8] Verizon argues that the surcharge mechanism is not competitively neutral or equitable because it shifts the funding burden onto traditional wireline and wireless carriers; exempts some competing voice telephone service providers such as "cable telephony providers;" and requires consumers of wireline and wireless voice telephone services to fund the programs while residents who obtain voice service from exempt providers avoid paying into the fund.[9] However, Verizon's arguments are incorrect. Providers of cable telephony do collect the surcharges for the public policy programs from their customers who purchase telecommunications services. In addition, as DRA and other parties suggest, the Commission can remedy any inequity regarding VoIP provider participation by asking the FCC to make explicit the implied jurisdiction conferred on the states when the FCC included VoIP providers in the federal universal

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[5] Cricket Comments at 3.

[6] TURN/NCLC Comments at 7-8. The FCC did not definitively resolve the question of whether VoIP providers using the FCC's interstate safe harbor amount would be immune from states' relying on the residual percentage as the state's own safe harbor portion.

[7] Fones4All Comments at 4.

[8] Verizon Comments at 4.

[9] Verizon Comments at 5.

support mechanism.[10] Moreover, TURN/NCLC and other parties point out that a numbers- or connections-based mechanism may have inequitable effects for the most vulnerable consumer segment: residential and low-income customers.[11]

Finally, the Commission should reject Verizon's arguments that the surcharge mechanism is inefficient because it creates disincentives. The numbers and connections-based proposals also create disincentives and arbitrage opportunities. As pointed out by NASUCA in an ex parte filing at the FCC, the numbers and connections-based proposals create incentives for arbitrage by creating opportunities for service providers to reduce the use of numbers or reduce the assessment on specific types of numbers.[12] Absent specific evidence that the current mechanism is inadequate, the Commission should find that the surcharge mechanism is currently suitable.

B. The Current Surcharge Mechanism Should be Suitable for the Foreseeable Future

Various parties express views in common with DRA that the funding base shows no signs of instability for the foreseeable future.[13] For example, Fones4All states that fears that consumers may be migrating from traditional regulated telephone services to VoIP and other technologies is "extremely premature."[14]

On the other hand, AT&T and Verizon argue that the surcharge mechanism is not viable in the long-term. However, they fail to provide sufficient data or evidence for these concerns other than general unsupported speculation. AT&T argues that because of the increasing use of certain services such as VoIP and the FCC's increased safe harbor percentage of wireless services, the all-end-user surcharge is not flexible enough to deal

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[10] DRA Comments at 12-13.

[11] *See* TURN/NCLC Comments at 7-8; Cricket Comments at 3.

[12] *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service…,* WC Docket No. 06-122, FCC 06-94, *et al., Ex Parte Communication of NASUCA* (released June 29, 2006) at 3.

[13] DRA Comments at 11-12

[14] Fones4All Comments at 4..

with rapid changes in the technology and the market.[15] Verizon states that the industry is at the beginning of a major shift away from reliance on traditional wireline services into a competitive market whereby consumers can choose to receive voice service from various options. Verizon claims that the funding mechanism should be modified to account for these changes as well as to adjust to the blurring of distinctions between interstate versus intrastate traffic.[16]

The current funding mechanism is no less flexible than the connections/numbers-based mechanism, as recently demonstrated by the FCC's action regarding the wireless safe harbor and VoIP revenues. The current surcharge mechanism easily allows for expansion of the base of contributors to the funds. The FCC demonstrated this by establishing a federal safe harbor percentage for VoIP interstate revenues, which action implied that the remainder constitutes *intrastate* VoIP revenues. DRA, Cricket, and Cingular urge the Commission to take steps to assess the intrastate portion of VoIP revenues.[17] TURN/NCLC also support the Commission's expansion of the base of contributors to include all telephony providers, including VoIP and DSL customers.[18]

TURN/ NCLC also correctly dismiss Verizon's arguments about the alleged difficulty of identifying intra vs. interstate traffic. As TURN/ NCLC point out, service providers "currently disaggregate their interstate and intrastate revenues for various purposes, including the assessment of taxes and regulatory charges."[19]

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[15] AT&T Comments at 39-40

[16] Verizon Comments at 5.

[17] In DRA's opening comments, we note that there was some ambiguity surrounding the FCC's VoIP USF Order and suggest that the Commission clarify with the FCC California's authority to assess the remainder of the FCC's established interstate safe harbor for VoIP revenues as the intrastate portion. DRA does not oppose the recommendation of other parties that the Commission simply assess the intrastate portion of VoIP revenues, and believes that this is a reasonable interpretation of the FCC's VoIP USF Order. DRA comments at 12-13; *see also* Cricket Comments at 2-3; Cingular Comments at 3.

[18] TURN/NCLC comments at 5.

[19] TURN/NCLC comments at 6-7.

C. Necessary Features of any Replacement Mechanism

DRA and other parties such as Cingular, TURN/NCLC, and Fones4all note that any replacement funding mechanism should be broadly based, competitively neutral, and equitable (i.e., not regressive).[20] Verizon too asserts that the funding mechanism should be equitable and competitively neutral.[21] DRA believes that the current surcharge mechanism best meets these requirements when modified to broaden the contribution base.[22]

1. The Funding Mechanism Should be Equitable

TURN/NCLC, Fones4All, Cricket and Cingular[23] all highlight the importance of equity in the funding mechanism, and for these reasons express concerns over the connections or numbers-based mechanisms.

Although Verizon appears to support equity in the funding mechanism, its concern about equity is focused on the customer segments of different providers, rather than customers of different economic classes. Verizon criticizes the current mechanism as inequitable because certain consumers (cable telephony and VoIP) are not contributing to the mechanism while others (wireless and wireline telephone) support the mechanism. However, DRA notes that cable providers offering broadband service are not subject to the Commission's jurisdiction even under a numbers or connections-based proposal; further, cable providers offering VoIP service or other VoIP providers should contribute to the programs, as recommended by parties including DRA. Moreover, as DRA and other parties note, it is critical in maintaining universal service for all Californians that the

[20] DRA comments at 13-14; Cingular Comments at 2; Fones4all Comments at 6-7; Cricket Comments at 3; TURN/NCLC Comments at 5.

[21] Verizon Comments at 8.

[22] DRA Comments at 13-14.

[23] TURN/NCLC Comments at 7; Fones4All Comments at 6-7; Cricket Comments at 2, Cingular Comments at 2. *See also* DRA comments at 15.

Commission ensure that the lowest income and residential consumers are not unfairly assessed a greater portion of the burden than justified by their usage.[24]

2. Contribution Base should be Broad and Competitively Neutral

The record reflects that the best way for the Commission to broaden the contribution base and make the mechanism competitively neutral is by including VoIP revenues in the revenues base. For example, Cingular states that the "contribution base should be as broad as possible" to ensure competitive neutrality, and should include all services which originate or terminate on the PSTN.[25] Cricket Communications similarly recommends that the Commission could relieve the financial burden on consumers by expanding the contribution base.[26] TURN/ NCLC advocate that the Commission expand the base of contributors to "include all providers utilizing the underlying telecommunications infrastructure.[27] DRA has recommended that the Commission clarify with the FCC that it has authority to assess the intrastate portion of VoIP revenues.[28]

3. The Commission Must First Determine Changes to the Programs and Analyze Effects of a Replacement Mechanism

DRA reiterates here that the Commission should only consider changes to the funding mechanism after it has first has determined: i) whether and how it will change each of California's public policy programs; and ii) how any alternative funding mechanism might inequitably shift funding burdens.[29] Because the design of the alternative funding mechanism may critically affect fairness, DRA recommends that the Commission maintain the surcharge funding mechanism until it has fully determined

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[24] TURN/NCLC Comments at 8; Fones4All Comments at 6-7.

[25] Cingular Comments at 2-3.

[26] Cricket Comments at 2-3.

[27] TURN/NCLC Comments at 5

[28] DRA Comments at 12-13. To the extent wireless contributions maintain their current upward trend, the fund will continue to receive substantial revenues from wireless carriers.

[29] DRA Comments at 15-16.

what changes it will make to the public policy programs; ensured that a new mechanism would be fair and symmetrical with the programs' supported services; and analyzed how a new funding mechanism would affect different consumer classes.[30] Fones4All similarly encourages the Commission, before it decides to adopt a numbers/connections-based mechanism, to examine fully the impact of such alternatives on those consumers "who are the intended beneficiaries of the PPPs, including low-income, minority, elderly and disabled consumers."[31]

Even parties that support the numbers or connections-based alternatives suggest that there will need to be a Commission-sponsored workshop to design and evaluate an alternative funding mechanism.[32] CCTA for instance concedes that "further examination [in comments or workshops] of numbers-based proposals is necessary" before any such proposals can be implemented.[33] DRA agrees that workshops may be necessary to resolve issues, after the Commission *initially* undertakes its own independent detailed study and analysis of the impacts of alternative funding mechanism proposals.

Finally a few parties propose that the Commission should maintain the current surcharge mechanism *until* the FCC has made modifications to the federal funding mechanism.[34] Cingular expresses its "strong belief" that the "contribution methodology employed for California funds should continue to mirror that of the FCC."[35] DRA agrees that any major modification to the funding mechanism would be premature, especially given that there is no evidence that an alternative it is necessary at this time.

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[30] DRA Comments at 14-16.

[31] Fones4All Comments at 6-7.

[32] Cox Comments at 2; Verizon Comments at 11-12.

[33] CCTA Comments at 1.

[34] Cingular Comments at 4; AT&T Comments at 38-39; TURN/NCLC Comments at 8.

[35] Cingular Comments at 4.

D. The Commission Should Analyze the Impacts of a Numbers/Connections Proposal

Both AT&T and Verizon have proposed a numbers/connections-based mechanism without providing significant detail. AT&T refers to a numbers/connections proposal that was submitted in an ICF ex parte to the FCC. It would assess the same flat-fee on all working telephone numbers. In addition to the working telephone number assessment, the ICF proposal would also assess the network connections based on the capacity of a network connection.[36] Meanwhile Verizon notes that it has proposed a numbers/connections proposal at the federal level, but provided minimal details. The mechanism would assess working telephone numbers and would assess revenues of customers that use services that do not use numbers.[37]

Under a numbers-based proposal, as TURN/NCLC point out, a residential and business customer would pay the same amount per telephone number, with the business customer experiencing a reduction in its universal service burden and the residential customer incurring additional amounts in surcharge unrelated to usage. DRA also has concerns that a flat-fee connections-based proposal is likely to shift the funding burdens disproportionately onto customers who have no alternatives and would impose inequitable burdens on small business and residential customers.[38] For the moment, however, there is no data by which to predict reasonably how funding burdens may shift under alternative proposals. Absent such data, it is premature for the Commission to adopt a numbers/connections mechanism. For this reason, DRA recommends that the Commission conduct a study/analysis of the impacts of alternative funding proposals. DRA notes that a variety of factors may influence the impacts of a numbers/connections-based mechanism on consumers. They include:

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[36] *See* Intercarrier Compensation Forum ("ICF") Plan, CC Docket No. 01-92 (Oct.5, 2004).

[37] Verizon Comments at 8-9.

[38] DRA Comments at 15-16.

- **Definition of "connection."** The FCC has defined a connection as "independent access to a public network." Under the FCC's definition, resellers may not have "independent" access to a network.[39] If resellers are not considered to have "independent" access to a network, the mechanism may not be competitively neutral.
- **Definition of "capacity."** The AT&T numbers/connections proposal at the FCC would assess different capacity tiers for business consumers at different multiples.[40] Such a proposal may provide opportunities for arbitrage and would certainly penalize adoption of higher bandwidth services.[41] For example, as the FCC noted, a tiered approach for multi-line business assessments may skew marketplace behavior and deter multi-line business consumers from purchasing certain thresholds of capacity.[42]
- **Base amount/flat-fee**. According to the ICF ex parte, the proposed numbers/connection mechanism would assess each working telephone number one unit. It is unclear whether that one unit would be one dollar, or some other unit. The amount obviously would have significant impact for consumers. Further, it is unclear whether the unit/base amount would be the same or different for the categories of working telephone numbers and capacity assessments.

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[39] *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service…,* CC Docket No. 96-45, FCC 02-43, Further Notice of Proposed Rulemaking and Report and Order (released February 22, 2002) ("FCC USF FNPRM") at para. 56. The FCC points out that resellers of interstate telecommunications services may not provide a connection to the telephone network. *Id.* at para. 66.

[40] Specifically the proposal is to assess 1 unit for each non-switched dedicated network connection less than 1.544 mbps, 5 units for a connection greater than 1.5 mbps but less 45 mbps, and 40 units for a connection 45 mbps or higher but less than 200 mbps, and 100 units for a non-switched dedicated network connection of 200 mbps or higher.

[41] Higher bandwidth increments would be taxed even when their nominal retail price remained the same.

[42] FCC USF FNPRM, at para. 54.

- **Calculation of working telephone numbers**. DRA notes that it will not be administratively easy to determine the number of working telephone numbers. Even AT&T recognized in its numbers/connection proposal at the FCC that the Numbering Resource Utilization Forecast ("NRUF") reports are not reliable for universal service surcharge purposes.[43]
- **Numbers may become obsolete.** Although Verizon and AT&T tout the numbers/connections proposal as being more reflective of future trends, they fail to recognize that numbers themselves may not be used in the future. In fact, some industry analysts suggest that "future technological changes will changes lead to use of a customer identifier other than the telephone number."[44]
- **Limitations of the numbers/connections-based approach.** Verizon also sets forth a series of principles to be considered if the Commission were to adopt a numbers-based approach. One of them would provide for a reduced rate for expansion numbers in family share plans for wireless customers.[45] This provision demonstrates that customers cannot be fairly assessed under a numbers-based approach without major modifications and undermines Verizon's claim that the numbers based mechanism is inherently 'equitable, non-discriminatory and competitively neutral.'[46]

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[43] *See ICF Proposal on Intercarrier Access Reform and Universal Service*, CC Docket No. 01-94 (March 2004), at 78. Although carriers report numbering data to the FCC every six months, the reporting carrier may not ultimately assign the number to the end-user nor have the billing relationship with the end user. For example, Local Telephone Number Portability allows customers to take their telephone number with them when switching service providers. Also, incumbent carriers provide their numbers to VoIP providers and ISPs. Carrier data on these intermediate numbers may not be specific enough to determine which providers should be assessing surcharges.

[44] CRS Report for Congress *Telecommunications Act: Competition, Innovation, and Reform* p. CRS-65) http://www.educause.edu/ir/library/pdf/EPO0635.pdf

[45] Verizon Comments at 10.

[46] Verizon Comments at 9-10.

III. ULTS (CALIFORNIA LIFELINE)

Parties generally agree that the Universal Lifeline Telephone Service ("ULTS") program is effective. The parties also support the Commission's inclusion of wireless service in ULTS, provided certain conditions can be met. The record reflects that the ULTS program may need to be modified to encourage wireless participation and to address changes in basic service rate regulation. DRA opposes the proposal of some parties to have a third party administrator operate all aspects of the ULTS program and supports an investigation into whether there is a cost basis for the $10 ULTS conversion charge.

A. The Record Reflects That the ULTS Program is Achieving its Statutory Goals

The record demonstrates that that ULTS (also referred to here as "lifeline" service) program is meeting its statutory goals, of ensuring "high quality basic telephone service at affordable rates . . . to low income citizens."[47] As Cox Communications states, "more than 20 years after the program was adopted, basic phone service is available, at a low cost, across the entire state."[48] The Commission previously interpreted the Legislature's intent behind ULTS by establishing a benchmark of 95% penetration of basic telephone service to all California households.[49] While the telephone penetration of low-income households is slightly below that, at 92.5%,[50] the current penetration rate of *all California households* has exceeded 95%[51], indicating that the ULTS program is meeting the

[47] P.U. Code Section 871-884.5.

[48] Cox Comments at 3.

[49] AT&T Comments at 3, citing D.94-09-065, 56 Cal.P.U.C.2d 117 (Sept 15, 1994), and Verizon Comments at 13, citing D.94-09-065 (mimeo), at 6.

[50] DRA Comments at 20 and TURN/NCLC Comments at 19, citing the Commission's June 2006 Report on "Universal Telephone Service to Residential Customers" at 4.

[51] Verizon Comments at 14, citing FCC Wireline Competition Bureau's Industry Analysis and Technology Division Report: "Telephone Penetration by Income By Sate" (rel. May 2006) at 11-12, accessible at http://www.fcc.gov/wcb/stats.

Commission's goal and is successful in providing basic telephone service "to the greatest number of citizens."[52]

While Verizon states that the statutory goals are being fulfilled, it argues that changes to the ULTS program are necessary in order to ensure fund stability, claiming that "California spends the most per customer, yet achieves similar or lower penetration rates among low-income households."[53] Verizon's claims are not consistent with the evidence. California has the sixth highest penetration rate in the country and reaches almost 93% of low-income households,[54] and according to the FCC's most recent data, thirty-one other states spend more per lifeline customer than California.[55] Verizon's selective use of statistics from different sources[56] (with different data-gathering methods) artificially distorts the fact that California's ULTS program is both effective in reaching low-income consumers and efficient in use of universal service funds.

Verizon also alleges that the lifeline program is oversubscribed due to generous income eligibility guidelines, and recommends that the Commission bring eligibility thresholds in line with FCC guidelines.[57] While California's ULTS income guidelines are higher than the FCC's,[58] the California thresholds are nevertheless appropriate and reasonable given the fact that the cost of living in many parts of this state is significantly

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[52] P.U. Code Section 8718.5(a).

[53] Verizon Comments at 15.

[54] DRA Comments at 20, footnote 33 (citing CPUC's "Report to the California Legislature, Universal Telephone Service to Customers" (June 2006)).

[55] "Trends in Telephone Service" June 21, 2005 at 19-11

[56] Verizon variously selects and compares statistics from the FCC, from the Universal Service Administrative Company, and from Commission staff reports.

[57] Verizon Comments at 19.

[58] As Verizon notes, a customer is eligible to participate in the federal Lifeline program if the person's total household income is at or less than 131.9% of federal poverty thresholds. Verizon alleges that in California, a one person household is eligible for ULTS if the person earns at or less than 217% of the poverty line, and a household of three individuals is eligible for California ULTS if its total income is at or below 151% of the federal poverty line. *See* Verizon comments at 19. This does not reflect the entire picture. In California, one-two person households are grouped together, while the federal poverty guidelines group one-person and two-person households by separate income levels. Thus, it is true that one-person household eligibility in California is available for up to 217% above the federal poverty line,

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higher than the FCC's national cost of living standards. The Public Policy Institute of California has noted that official poverty guidelines do not incorporate California's high cost of living.[59] Thus, the Commission should reject the assertion that the eligibility guidelines are too generous. Although it provides no statistical basis for its concern, Verizon recommends that there be further compliance with the Moore Act to reduce the cases of fraud, and thereby reduce the burden on the fund.[60] DRA believes that the new certification guidelines in place for verification of customer eligibility are probably sufficient for the prevention of fraud, although evidence is lacking due to the very recent implementation of the certification verification requirements.

In contrast to Verizon, Cingular claims that the statutory goal is not being met because wireless carriers are effectively precluded from participating.[61] DRA notes that the Commission instituted this OIR, in part, to address whether other technologies and services should be included in the lifeline program. DRA supports examination of the viability of including wireless services in lifeline, but notes that exclusion of wireless service from lifeline, by itself, does not prove that statutory goals have not been met.

B. The Commission Should Explore Encouraging Wireless Participation in the ULTS Program

The record supports DRA's recommendation that the Commission should explore including wireless in the ULTS program, but not including broadband or VoIP as ULTS-supported services at this time.

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but *two person household eligibility* is available up to 161% above the relevant federal poverty guideline.

[59] According to the Public Policy Institute of California "California's high cost of living is not reflected in official poverty measures. Poverty is officially measured by comparing family income to a nationally determined threshold and does not take into account regional differences in cost of living. The poverty threshold was $19,157 for a family of four in 2004. However, the U.S. Department of Housing and Urban Development (HUD) estimates the two-bedroom fair market rent in San Francisco to be $21,300 annually. Even for Los Angeles, the HUD estimate for rent ($12,252) is well over half the poverty threshold."

[60] Verizon Comments at 20.

[61] Cingular Comments at 5.

1. Wireless

Many parties who commented on ULTS recommended, or at least expressed openness to, the inclusion of wireless in the ULTS program.[62] Greenlining states that, based upon discussions with consumer advocates, community-based organizations, and "commission workshops on the staff report, it is evident that a great interest in a low income cell phone program exists."[63] California Community Technology Policy Group and Latino Issues Forum ("CCTPG /LIF") point out that, as more and more people rely on wireless, it is becoming a de-facto basic phone service for many people, enough to call for inclusion of wireless service in ULTS.[64] These comments support DRA's view that an increasing number of customers are relying upon wireless communications, and that the mobility of wireless service may have unique benefits for certain types of low-income consumers.[65]

At the same time, parties raise issues about including wireless in the ULTS program that will require resolution. These parties question, among other things, whether wireless service is consistent with the ULTS program's statutory goals and the Commission's definition of "basic service;" whether wireless service can be financially supported by the program; and whether wireless service is reliable enough to constitute basic residential telephone service.

a) Definition of "Basic Service"

Many parties raise the question of whether the GO 153 definition of "basic service" would need to change and/or whether there would need to be statutory changes to accommodate wireless participation in the ULTS program. DRA does not believe that there need to be statutory changes, but there may need to be some modifications to GO 153 to provide for wireless participation.

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[62] Cingular Comments at 4; AT&T Comments at 4 and 6; DisAbRa Comments at 15; Frontier Comments at 3; CCTPG/LIF Comments at 5; Fones4All Comments at 7; Greenlining Comments at 2.

[63] Greenlining Comments at 2.

[64] CCTPG/LIF comments at 5.

[65] CCTPG/LIF Comments at 5.

Verizon Wireless points to the Commission's statement in D.96-10-066 (a decision that is now 10 years old) that "[u]ntil the Moore Act is amended by Legislature, the ULTS program funds should not be used to subsidize a service that can be used anywhere" and notes that no legislative action has yet been taken to allow ULTS to provide funding for services other than "basic residential telephone service."[66] TURN/NCLC also question whether wireless service constitutes "residential service" pursuant to the statute.[67] While the Moore Act itself refers to "basic residential telephone service" as the service to be supported by the ULTS program, DRA believes that the Commission may redefine or reinterpret "basic residential telephone service" so that it encourages wireless participation as long as certain essential elements of the current definition are retained. The statute does not need to be changed and the Commission need not interpret "residential" service as meaning service at a fixed geographical location such that wireless service for some income-eligible citizens (*e.g*. homeless and migrant populations) are excluded from taking advantage of the ULTS program-discounted rates.

Although there may not need to be statutory changes, the definition of "basic service" in GO 153 may need to be adjusted in order to encourage wireless participation in ULTS. Surewest emphasizes that the Commission must ensure that customers are still receiving the benefits conferred by "basic service."[68] Cox does not believe that wireless, or any advanced service, should be included in ULTS until the time comes when the Commission decides to redefine "basic service" and refers specifically to the URF proceeding.[69] Of those commenting parties who support including wireless, two parties suggest modifying GO 153 by adopting the list of services required for Federal eligible telecommunications carrier ("ETC") eligibility as the requirements of "basic residential

[66] Verizon Wireless Comments at 13.

[67] TURN/NCLC Comments at 12.

[68] Surewest Comments at 5

[69] Cox Comments at 11.

telephone service" in the Moore Act.[70] Because the federal list is shorter than the requirements for ULTS, and may be easily met by wireless carriers, this modification may be one way of encouraging wireless carriers to participate in ULTS.[71] However, DRA cautions against adopting only the federal requirements for the definition of basic service without considering whether essential features that consumers now receive as part of "basic service" would no longer be guaranteed under the federal ETC service requirements. For example, the Commission would be depriving low-income consumers of, among other things, free access to 800 or 800-like services, the ability to receive free unlimited incoming calls, one-time free blocking to information services, and free access to 911/E911 services.[72] These are essential elements of basic service that DRA does not believe should be eliminated from any definition of "basic service" that might be adjusted to accommodate wireless.

b) Jurisdictional concerns

Parties also raise concerns about whether any of the current GO 153 requirements, if applied to wireless carriers, would result in the Commission's exceeding its jurisdiction. AT&T, for example, states that the Commission cannot direct wireless carriers to offer ULTS.[73] Further, pursuant to the current GO 153 guidelines, if wireless carriers were to offer ULTS, they would be required to file ULTS tariffs and many commenters assert that the Commission does not have jurisdiction to require such tariffs of wireless carriers.[74] TURN/NCLC also note that the Commission has yet to resolve whether it has sufficient authority over wireless carriers to mandate provision of ULTS at

[70] Cingular Comments at 7-8; AT&T Comments at 6.

[71] Such a modification may also be compatible with DRA's recommendation that all carriers participating in ULTS first become eligible ETCs in order to qualify for Federal lifeline.

[72] *Cf.* D.96-10-066, Appendix B, with 47 CFR 54.101(a).

[73] AT&T Comments at 8.

[74] These parties assert that tariff-filing constitutes rate regulation.

specific rates, and whether that rate could be established at a level that is below the operating cost of the carrier.[75]

The Commission must consider these issues in developing a framework for including wireless in ULTS. In order to address AT&T's concern that the Commission might require wireless carriers to offer ULTS, DRA suggests that the Commission *encourage* wireless providers to participate in lifeline, but not *require* them to do so. Further, one way to resolve the tariff filing requirement is by modifying GO 153 to allow wireless carriers to file price-sheets or tariffs with the stipulation that such filings would not submit the carriers to rate regulation. Because wireless carriers would participate voluntarily in the ULTS program, the Commission could also require such price-sheets or tariffs as a condition for participation.[76]

As for requiring wireless carriers to offer a specific ULTS rate, DRA agrees with TURN that the success of the ULTS program is "dependent upon the ability of the Commission to require any carrier offering ULTS to do so at a discounted rate."[77] If the Commission does not require wireless carriers to offer ULTS at a specific rate, the discounted wireless service may not be affordable enough for eligible consumers, which would largely defeat the purpose of extending program participation to wireless service providers. Accordingly, the Commission should explore options for making wireless service affordable for ULTS customers, including, either: i) establishing a discount/voucher for consumers to apply to their wireless service; or ii) requiring wireless carriers to offer a discounted rate as a condition for voluntary participation in the program.

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[75] TURN/NCLC Comments at 11.

[76] There is nothing that would prohibit a wireless carrier from voluntarily filing such a price sheet/tariff. Another option would be to create an exception for wireless carriers not to file price sheets or tariffs, but to require them to include the ULTS rates and terms and conditions in their general terms and conditions on their websites and in their general sales materials.

[77] TURN/NCLC Comments at 11.

c) Financial Viability

Commenters note that the financial impact of wireless participation in the ULTS program depends on how the program is defined and whether the amount of support provided to wireless carriers is different from, and/or significantly higher, than the current amount of wireline ULTS support.

AT&T states that expanding the program to include wireless participation could increase the ULTS budget only if a disproportionate number of wireless participants are non-ETCs.[78] Verizon, however, estimates costs of adding additional technologies to ULTS at $1.7 billion.[79] Verizon's estimate includes the costs of supporting broadband and not just wireless service. Further, Verizon's calculations assume that ULTS customers would receive a 50% discount on the service regardless of delivery platform (i.e. wireline, wireless, internet). Verizon's figures also imply that customers could receive subsidies for more than one service. However, the Commission need not adopt a program based on Verizon's assumptions and it is neither necessary nor consistent with the Moore Act for ULTS consumers to receive support for more than one service.[80]

TURN/NCLC also notes that the Commission must "consider how to address the fact that basic wireless services appear to be more expensive than landline telephone services assuming the same service elements are offered."[81] TURN/NCLC point out that the Commission may need to consider whether to reimburse the cost of the handset in addition to the service component.[82] However, in order to limit the costs of wireless participation in ULTS, DRA recommends that the Commission should consider program limitations that would support only one technology per ULTS household; provide support

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[78] AT&T Comments at 7.

[79] Verizon Comments at 27.

[80] The Moore Act provides for a "single subsidized telephone connection" to a qualifying household unless there is a disabled household member (in which case, two ULTS lines are available). *See* GO 153, Appendix A and Section 5.1.5.

[81] TURN/NCLC Comments at 11.

[82] *Id.* at 12.

only for wireless *service* (as many carriers offer free handsets with wireless subscriptions); and offer one flat ULTS subsidy to wireless carriers similar to that of wireline carriers.

d) Reliability and Mobility

Parties also express concern about the reliability of wireless.[83] Among the concerns expressed were potentially unreliable E911 coverage that is not not functionally equivalent to E-911 service on wireline networks, general wireless coverage reliability, and the need to have access to a phone at a residence at all times. DRA recognizes that wireless services do not always provide the same reliability of service as wireline service, but on the other hand, wireless services provide certain functions when wireline phones may be unavailable due to emergency or loss of power. Concerns about whether a mobile phone would remain at the residence for emergency purposes are valid; however, it is the very mobility of wireless phones that provide unique benefits for consumers. In any event the customer would have the choice of wireless or wireline ULTS. Although the concerns regarding wireless service and emergency E-911 access are well-founded, DRA notes that it would be up to the individual consumer to determine whether the mobility benefits of wireless outweigh the benefits of wireline service. DRA does support the recommendations of CCTPG/LIF that for wireless carriers participating in ULTS, service quality standards must be met.[84]

C. Broadband/Internet Should Not Be Supported Through ULTS at this Time

Many parties comment upon the appeal of including broadband access as a part of lifeline service while recognizing the difficulties. Surewest notes that internet access is a very different kind of service from wireline voice service, and that it does not, by itself,

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[83] *See, e.g.*, DisabRa Comments at 17; Surewest Comments at 5; Small LECs Commetns at 5; TURN/NCLC Comments at 14.

[84] *See* CCTPG/LIF Comments at 6-7.

allow customers to receive voice services or 911 access.[85] CCTA states that the Commission cannot provide subsidies for DSL services because it lacks authority over such services.[86] AT&T states that including broadband may require statutory changes.[87] As DRA states in its Comments, in addition to these jurisdictional issues, the penetration rates of broadband are not high enough yet to merit consideration for inclusion in the ULTS program.[88]

D. The Commission Should not Support VoIP Through ULTS at This Time

Most commenting parties do not recommend including VoIP in lifeline at this time. (VoIP service is made possible through a broadband internet connection, and is therefore subject to many of the concerns noted above.) Surewest and the Small LECs point out that customers of VoIP service providers do not contribute to ULTS at this time,[89] so it makes little sense to allow them to draw from the fund.[90] CCTA (whose membership includes firms providing VoIP) states that the Commission has no jurisdiction over VoIP, and cannot order VoIP providers to offer lifeline.[91] AT&T states that including VoIP may require statutory changes.[92] DRA agrees that while VoIP technology may eventually provide important benefits for customers, the service is in its beginning stages, and does not have the penetration rates to justify inclusion in a universal service program such as ULTS, even aside from jurisdictional concerns.

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[85] Surewest Comments at 6; Small LECs Comments at 6.

[86] CCTA Comments at 4.

[87] AT&T Comments at 8.

[88] DRA Comments at 30. As noted, DRA believes that, at this time broadband access should be provisioned to low-income communities through CBOs, libraries, schools, and other public venues through the California Teleconnect Fund.

[89] VoIP providers will begin contributing to the federal USF. *See In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, *Report and Order and Notice of Proposed Rulemaking*, FCC 06-94 (rel. June 27, 2006) (*"VoIP USF Order"*).

[90] Surewest Comments at 6; Small LECs Comments at 6.

[91] CCTA Comments at 2.

[92] AT&T Comments at 8.

E. Other Proposals to Maintain ULTS in the Face of Market and Regulatory Changes

1. ETC

DRA proposes that all carriers seeking to offer ULTS first qualify as ETCs according to Federal standards, thus enabling them to receive federal Lifeline funds. Other parties, including AT&T and Cingular, support this position. Cingular states that carriers who obtain low-income support through the lifeline program and who are not ETC-designated result in higher costs for all Californians because they are not able to receive matching funds from the federal lifeline program.[93] AT&T also supports requiring ULTS providers to be certified as ETCs in order to ensure the viability of the program.[94]

2. Third Party Administrator

AT&T recommends using a Third Party Administrator (TPA) for all administrative responsibilities in a revamped ULTS program. AT&T estimates that this will increase the cost of the program by about $8 million.[95] This proposal is inconsistent with the statute, unnecessary, and too costly for ratepayers.

P.U. Code Section 873 charges the Commission with a number of tasks related to administering the ULTS program. Among other things, Section 873 requires the Commission annually to set the rates and charges for ULTS; develop eligibility criteria for the service; and assess the degree of achievement of universal service, including telephone penetration rates.[96] Section 879 also requires the Commission to issue orders

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[93] Cingular Comments at 9.

[94] AT&T Comments at 5.

[95] AT&T Comments at 13. P.U. Code Section 874 currently mandates that the ULTS rate charged to consumers be no more than "50% of the rates for basic flat rate service, exclusive of federally mandated end user access charges," or no more than 50% of the basic rates for measured service, exclusive of federally mandated end user access charges. The Commission found that the basic flat rate should be tied to AT&T's tariffed rates.

[96] Further, Section 879 requires that the Commission annually establish proceedings to set rates for ULTS and give interested parties the opportunity to comment on proposed rates and funding requirements and proposed funding methods.

that require telephone corporations providing ULTS to collect the funding requirements in the form of a surcharge to service rates from virtually all non-ULTS customers. The Moore Act does not provide for the Commission to delegate its authority to TPAs or other entities. The Commission cannot simply relinquish these duties to a third party.[97]

Moreover, as a practical matter, transferring administration of the ULTS to a TPA would divest the Commission of its role in reviewing and/or approving provider claims and reviewing and establishing rates and budgets. While DRA does not oppose using a TPA for administering the new income eligibility certification requirements mandated by the FCC (which became effective in California in July 2006), DRA sees no need for a TPA to administer ULTS program itself. Given that the ULTS program currently appears to be working well, there is no practical reason that the Commission should delegate its authority over ULTS administration to a third party. As DRA noted in Comments, there is no evidence that including wireless companies in ULTS will increase the administrative burden of the current certification TPA. Most critical for ratepayers, the Commission should remain in charge of overseeing ULTS so that it retains responsibility for the budget and ensures that the surcharges that carriers impose on ULTS customers are reasonable and necessary.

3. ULTS Rate(s)

Many service providers recommend redefining how the ULTS rate is calculated. Currently, the ULTS rate is based upon 50% of AT&T's residential rate.[98] Pursuant to the recent URF Decision (D.06-08-030), the basic AT&T residential rate will no longer be capped after two years and NRF companies will apparently be allowed to deaverage prices geographically. Therefore, AT&T's residential rates may increase; and consequently, vary throughout the state. Basing the 50% discount on AT&T's rate thus

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[97] In addition, the Government Code imposes limits on the state's ability to contract functions that may be performed by civil servants. Pursuant to special legislation, the Commission does contract out the administrative oversight of contracts that the Commission has entered into for the provision of services for the DDTP. P.U. Code Section 2881.2.

[98] *See* G.O. 153, Rules 8.1.4.1 and 8.1.5.1.

may result in higher subsidies as well as higher ULTS rates. Many parties recommend that a new method for determining the rate be established, which would require new Commission guidelines (and possibly new legislation).[99] Although de-linking the ULTS rate from AT&T's residential basic recurring rate may also encourage wireless carriers to participate if the new ULTS rate (and subsidy amount) is higher than the current rate and subsidy amount,[100] the Commission must consider the impact of any new rate/subsidy amount on the ULTS budget and ensure that the rate/subsidy is reasonable, and competitively, and technologically neutral.

Verizon suggests that the ULTS rate be calculated based upon each carrier's basic local service flat-rate. However, this may result in Verizon's ULTS customers paying more for service, because Verizon's basic local service rate is higher than AT&T's current rate.[101] DRA opposes this suggestion and recommends that, if the Commission does de-link the rate from AT&T's tariffed basic flat rate, the Commission should not tie ULTS subsidies or reimbursements to rates of the service provider for a given customer. The danger of having the ULTS discount apply to 50% of an individual carrier's rate without any ceiling or cap on the rate is that ULTS rates could increase significantly given that the ILECs' residential rates are apparently no longer subject to rate caps. Other parties propose different ways to establish the ULTS rate if the discount is de-linked from AT&T's tariffed rate.

- AT&T suggests that the Commission utilize a ULTS rate based on the original ULTS rate adjusted for inflation. This would result in a ULTS flat line rate of

[99] Small LECs Comments at 6; Surewest Comments at 6; Cingular Comments at 8; Verizon Comments at 16-18; AT&T Comments at 9-11; Cox Comments at 8; Frontier Comments at 4; Fones4All Comments at 8.

[100] Frontier stated that more service providers would be willing to participate in lifeline if the Commission transitioned to a customer reimbursement program, using a TPA to determine eligibility and issue a voucher or other form of payment directly to the customer, and that this discount be a statewide average lifeline customer rebate amount. Frontier Comments at 3-4. And Fones4All recommended that the "Commission should eliminate rules that tie the rate of reimbursement of program participants to the ILECs retail rates," a practice of which they state is disadvantageous for participating CLECs Fones4All Comments at 7-8.

[101] Verizon Comments at 16-17.

$7.38 and a ULTS measured rate of $3.97.[102] AT&T notes that this change will require a change to the P.U. Code. AT&T also recommends that the fixed benefit be given to the provider, and applied to the customer's bill.[103]

- Cox recommends setting a flat discount rate of $5.00 plus the current EUCL amount charged by the ILEC in that service area.[104]
- Similarly, Frontier recommends that the Commission establish a statewide average lifeline customer rebate and suggests revising the P.U. Code "to reflect alternative services that may be lightly regulated or non-regulated."[105]
- CCTPG/LIF recommend one set discounted rate for any service that lifeline customers select, via a rebate system payable with an electronic rebate deducted from the monthly bill.[106]
- Cingular supports de-linking ULTS rates from the AT&T rate and proposes a defined benefit per line. Cingular believes this would encourage wireless providers to participate in ULTS and help ease its administrative burdens by better anticipating the resources required from the fund.[107]

DRA does not have enough evidence, at this time, to support any of the proposals. DRA generally supports the idea of de-linking the ULTS rate (given that AT&T's residential rates will not be subject to rate caps after the next two years), but observes that any change to the ULTS rate could potentially have a huge impact on lifeline customers and lifeline penetration rates, which would be contrary to statutory goals. Given the seismic implications of the Commission's URF decision, DRA recommends that the Commission conduct further analysis of the ULTS rate or rates in a ratesetting portion of this proceeding.

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[102] AT&T Comments at 9-10.

[103] AT&T Comments at 10.

[104] Cox Comments at 8.

[105] Frontier Comments at 4.

[106] CCTPG/LIF Comments at 6.

4. Affordability

Based upon the Verizon/AT&T jointly funded "Affordability Study," Verizon alleges that Californians can afford service at rates much higher than the current lifeline rate, or even the current Verizon or AT&T basic flat-rate services.[108] These conclusions were reached through what appears to be an informal and random survey of a very small group of 5,017 residential customers in the Verizon/AT&T service areas.

DRA believes that the affordability study is based on too small a sample to provide significant data that could be relied upon by the Commission. The study also provides contradictory information regarding households that are eligible for ULTS but do not subscribe, from which no conclusion can be made regarding the affordability of basic service, nor what impact an increase in lifeline rates would have on *current* subscribers. Notwithstanding problems in the reliability of the study, the affordability study reflects that at least 44% of *recent non-customers*[109] had difficulty paying their phone bills (while they were phone customers). This means that a large percentage of those surveyed are not paying for telephone service because they find the service too expensive. Thus, if the ULTS rate should increase, the affordability study would suggest that there may be many customers who would discontinue telephone service due to an inability to pay – the very customers whom the ULTS program is intended to help maintain their service.

5. Consumer Education and Outreach

Consumer education and outreach is an important part of the lifeline program, as it is necessary in order to maintain and improve lifeline participation if the statutory penetration rates are to be maintained.[110] Verizon agrees that lifeline is an important

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[107] Cingular Comments at 8-9.

[108] Verizon Comments at 20.

[109] Recent non-customers are those households that have gone without wireline telephone service for one month or longer at any time in the past three years.

[110] DRA also notes that some parties discussed the notion of a "finder's fee" for carriers or consumer groups who identify and register customers in ULTS. DRA opposes a "finder's fee" for enrolling ULTS

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program, that outreach should be improved, and that because "it is intuitive that most residents with telephone affordability issues will likely use social services," more effort be made to expand outreach through social service offices.[111] TURN/NCLC states that "[i]ncreased outreach, particularly to multi-lingual and low-income rural communities, is necessary to ensure all Californians have access to a working, primary telephone line," and encourage the Commission to emphasize an aggressive outreach campaign.[112] Other parties also encourage further outreach,[113] and DRA commented that there may be a need to educate consumers about the new eligibility requirements. DRA therefore supports encouraging social service agencies to participate in lifeline outreach.[114]

6. Operational cost reimbursement

Some carriers recommend that they continue to recover the "reasonable" expenses incurred for serving lifeline customers.[115] The OIR does not raise operational cost reimbursement and no party has suggested in comments responding to this OIR that any telecommunications carriers cease being reimbursed for their ULTS operational costs. Nevertheless, Fones4All recommends that the Commission re-examine the operating expense rules because the cost factor method of reimbursement allegedly does not cover all of its costs.[116] Fones4All fails to mention that this issue was already addressed when the Commission previously determined (in response to a Fones4All request) that CLECs have the option of using the cost factor method or of calculating their incremental costs.[117]

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customers.

[111] Verizon Comments at 30-31.

[112] TURN/NCLC Comments at 19-20.

[113] Small LECs Comments at 7, Surewest Comments at 6, DisabRA Comments at 27.

[114] DRA Comments at 34.

[115] Cox Comments at 9, Frontier Opening Comments at 4, Fones4All Comments at 9-10.

[116] Fones4All Comments at 9-10.

[117] D.03-01-035, *mimeo,* at 3.

Nothing currently in the record provides a reason to change how operating cost reimbursement is calculated or to disallow such recovery.

7. Bundles

Many parties suggest that bundles could be a potentially valuable addition to ULTS. Cox and Fones4All support offering bundled services through ULTS, stating that ULTS customers should be allowed to take advantage of bundles, and be able to purchase basic service at a discounted lifeline rate, as well as a bundle, as long as the bundle includes basic service.[118] CCTPG/LIF recommend a rebate system that would have the flexibility to be applied to bundles. They recommend that the lifeline service that is a part of the bundle should have separable charges, so that if a customer can only pay a portion of the bill, the lifeline service will be the last to be disconnected.[119]

DRA recognizes that bundling is an important aspect of market competition, but urges the Commission to bear in mind the Moore Act's affordability mandate. If ULTS service were only made available as a part of a larger bundle, it would not meet the P.U. Code's goal of bringing basic phone service within the reach of low-income households. Therefore, DRA agrees with CCTPG/LIF that customers should have the ability to purchase stand-alone basic service in the ULTS program, and not be required to purchase bundled service to take advantage of the ULTS discount.[120]

F. ULTS Conversion Charge

The LifeLine program currently allows some carriers to charge their customers a $10 fee to switch from regular tariffed local exchange service to LifeLine service. The Commission posed questions about the cost basis for the charge and whether it should be eliminated, including the cost justification for the charge, whether the charge is consistent with the Lifeline program goals, and whether the charge should be modified or eliminated.

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[118] Cox Comments at 7; Fones4All Comments at 9

[119] CCTPG/LIF Comments at 7.

[120] CCTPG/LIF Comments at 7.

G.O. 153 requires utilities to set their non-recurring ULTS charge for service conversion equal to their ULTS connection charge. A service conversion occurs when a customer changes the class, type, or grade of service at a specific address.[121] This charge was originally proposed by Pacific (now AT&T) and the stated purpose was to prevent customers from simply taking advantage of the low installation rate.[122] AT&T's current tariffed conversion charge of $14.25 is lowered to $10 for Lifeline customers.[123]

This conversion charge may be consistent with Lifeline statutory goals to the extent that it there is a cost-basis for the charge, but it is not clear that there is cost justification for the service charge. At this time, DRA has not seen any certain evidence of, nor have parties presented such evidence for, the cost basis for the conversion charge. If there is no cost justification for the conversion charge, it may be in conflict with the goals of the Moore Act, which is to ensure affordable basic service to all Californians.

The only party to offer comments on this topic was AT&T. AT&T states that this charge should not be modified or eliminated.[124] AT&T contends that, because G.O. 153[125] allows for carrier reimbursement of lost revenues associated with this charge, eliminating or modifying the charge could have a large impact on the Lifeline fund. AT&T estimates that eliminating the charge alone could raise their claims on the Lifeline fund alone from $1,309,901 to $4,392,021.[126]

DRA has not seen documentation from AT&T that the charge is cost-based. DRA supports the Commission's investigation into whether there is cost justification for the charge, and recommends that, if the Commission finds no justification, the Commission eliminate the charge. Further, if there is no cost justification for the charge, DRA

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[121] D.00-10-028, *mimeo* at 21; AT&T Supplemental Comments at 1.

[122] D.94-09-065 at 56-57. The service conversion charge, an addition to G.O. 153, was reaffirmed in D.94-09-065, and again in D.00-10-028. *See* D.00-10-028 at 21.

[123] AT&T Supplemental Comments at 2.

[124] AT&T Supplemental Comments at 2.

[125] G.O. 153, Section 8.3.1, and 8.3.2..

[126] AT&T Supplemental Comments at 2. AT&T estimates this number based upon an estimate of 308,212 conversions during the 2006-07 fiscal year.

believes that GO 153 should be modified to eliminate carriers' ability to recover from the ULTS fund "lost revenues" that the carriers might claim from not recovering the conversion charge from ULTS customers.

IV. DDTP

A number of parties in addition to DRA found that, although the Deaf and Disabled Telecommunications Program ("DDTP") is effectively providing services to the deaf and disabled community, the DDTP could improve administration and efficiency and introduce new technologies into the program. There also seems to be consensus among parties including DDTP[127] that an enhanced marketing outreach program should be implemented. Although parties differed on the issue of means-testing, DRA reiterates below the reasons why the Commission should not adopt means-testing at this time. DRA reiterates that the following actions should and could be implemented within the current budgetary framework.

- Reorganize the administrative structure of the DDTP in order to streamline decision-making and openness.
- Integrate new technologies into the DDTP, as mandated by the P.U. Code,[128] without compromising traditional landline services or exceeding the legislatively mandated surcharge cap.
- Enhance outreach and marketing of the programs.

A. Reorganizing the DDTP administrative structure

DRA explains in its Comments that there are several entities involved in operating the DDTP, and that consolidation of these entities may help to streamline the DDTP process and expedite the DDTP's ability to incorporate new technologies into the program. Other parties also observe that there are some administrative inefficiencies with the way that the DDTP currently operates. TADDAC notes that there are

[127] Telecommunications Access for the Deaf and Disabled Administrative Committee (TADDAC) Comments at 4 and 10.

[128] P.U. Code Section 2881.0(4)(i).

difficulties and delays that are associated with "the complexity of running the program…"[129] AT&T believes that the DDTP has done a remarkable job in fulfilling some of its mandates, but states the program has been hampered by administrative bottlenecks that have hindered the process for approving new equipment and technologies.[130] The World Institute on Disability (WID) also comments that "the EPAC/TADDAC process is too slow: the Commission should adopt criteria to guide the process for recommending new equipment and should encourage modifications for streamlining the process."[131]

DRA agrees with these general observations and believes that its proposals in its Comments to streamline the administrative organization of the DDTP will foster efficiency and expedite the process for adopting new equipment into the program. DRA explained that the following entities are involved in interacting and advising the DDTP:

- The Telecommunications Division (TD) which is ultimately responsible for overseeing the program on behalf of the Commission.
- The California Communications Access Foundation (CCAF), which manages the day-to-day operations of the DDTP under contract.
- Three committees advising the DDTP:
    - TADDAC
    - the California Relay Service Advisory Committee (CRSAC) and
    - the Equipment Program Advisory Committee (EPAC).[132]

To make the DDTP more efficient, DRA recommended that the Commission consolidate the TADDAC with the advisory committees CRSAC and EPAC to improve

[129] TADDAC Comments at 9. TADDAC cites the transfer of DDTP to CPUC staff supervision and complex state contracting rules. "The nature of government is that it is slow in reacting to change, which has proven to be the case with the administration of the DDTP."

[130] AT&T Comments at __.

[131] World Institute on Disability (WID)Comments at 4.

[132] Several parties refer to DDTP as the California Telephone Access Program (CTAP), the equipment loan program. TADDAC, EPAC and CRSAC are advisory bodies; CTAP is the "access program" that DDTP implements.

the efficiency of the program.[133] The TADDAC makes the same recommendation to consolidate CRSAC and EPAC into the TADDAC, among other proposals.[134] Thus DRA reiterates that the Commission should consolidate these committees in order to improve the efficiency of the DDTP.

B. Integrating new technologies into the DDTP

As DRA and other parties note, the DDTP and the Commission have the authority and responsibility under current statute to expand the program to meet the evolving needs of its participants with the appropriate technologies.[135]

Parties observe however that the DDTP is not incorporating new technologies such as wireless equipment into its program as quickly as would be beneficial to disabled consumers.[136] Although DRA agrees that the process is slow, some of the criticism leveled at the DDTP for slowly adopting new technologies may result from unrealistic expectations. The California Coalition states that the DDTP's slow reaction time has delayed the adoption of new technology and that "[u]nder the current system, by the time a piece of 'newer' technology crawls its way through the approval process, it is no longer new. In the normal course of business, it should take no longer than six months from a decision to evaluate a particular type of equipment, conduct an evaluation, including vendor presentations, obtain Commission approval, issue a request for quote, and execute

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[133] DRA comments at 43.

[134] TADDAC Comments at 2. TADDAC's comments refer to its "Strategic Plan for Restructure and Placement of the DDTP" ("Strategic Plan") from January 2006. TADDAC proposes consolidation of multiple program contracts into one consolidated contract (Strategic Plan at 11), the creation of a "Telecommunications Program for the Deaf, Hard of Hearing & Disabled Unit" within the Commission (Strategic Plan at 23), *incorporation of EPAC and CRSAC into TADDAC*, and a modified equipment program to include vouchers "to allow consumers to purchase their own state-approved equipment." (Strategic Plan at 31) (emphasis added). The California Coalition of Agencies Serving the Deaf and Hard of Hearing ("California Coalition") also cites this document. California Coalition comments at 21.

[135] DRA Comments at 42. *See also* California Coalition Comments at 18 and TADDAC Comments at 14. P.U. Code Section 2881(i) provides: In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

[136] *See* California Coalition Comments at 16.

a vendor contract." DRA shares concerns about the cumbersome administration of the program, but notes that there is no evidence that new technologies must be adopted simply for the sake of adopting the latest technologies. There is no evidence that a six month review process is adequate to ascertain various questions regarding new technologies, including whether the new technology in question is suitable and should be offered to DDTP's constituency, provides access and ongoing service support, and meets elementary standards of reliability, quality, and usefulness for all DDTP participants.

However, DRA agrees that new equipment, particularly wireless and video-relay service equipment should be incorporated into the program. For example, the California Coalition recommends that "The CTAP should immediately move aggressively to offer accessible wireless devices including text pagers for the deaf and cellular phones specially designed or equipped to serve blind and other disabled consumers."[137] The TADDAC also emphasizes the ubiquity of wireless devices and the importance of IP relay for certain users:

> [I]n the last five to seven years wireless cellular phones have become ubiquitous in the general population along with wireless data oriented pagers that combine E-mail with text messaging. At the same time Internet Protocol Relay (IP Relay) has become an important tool for relay users supplanting in many cases the need for traditional TRS services and TTY's in particular.[138]

AT&T similarly advocates that the DDTP include wireless equipment in the program and notes that "[w]ireless and text messaging devices, for example, have become popular communication tools," but "CTAP equipment is limited to basic wireline telephony…."[139] The Commission should explore with the TADDAC the technical and economic feasibility of adding wireless and video relay services (VRS)-related equipment

[137] California Coalition Comments at 16.

[138] TADDAC Comments at 12 and 13.

[139] AT&T Comments at 15.

to the program so that the DDTP's goal of functional equivalency is achieved.[140] Indeed, the Commission has the obligation under P.U. Code Section 2881 to do so, in order to provide disabled consumers with "additional access capability consistent with evolving telecommunications technology,"

Some parties also suggest that *services*, such as wireless service, should be subsidized through the DDTP, because as AT&T notes, wireless service may be a "significant cost for many individuals with disabilities who live on limited income resources."[141] AT&T proposes that the Commission consider creating a "third program under DDTP that subsidizes the monthly service fee" but acknowledges that such a program may require substantial funding and statutory changes. The Disability Rights Advocates ("DisabRa") also recommend that the Commission should subsidize wireless services to disabled low-income customers either through DDTP or ULTS.[142] DRA does not have enough information to determine whether supporting wireless services to low-income disabled individuals would be financially feasible.[143] DRA recommends that the Commission explore and investigate whether supporting wireless service for low-income individuals through the DDTP would be financially feasible and would not have adverse impacts on consumer surcharges.

C. Enhance outreach and marketing of the programs to those eligible throughout the state

DRA raises concerns in its Comments that the DDTP program has not fully reached its desired target population because fewer than 500,000 Californians participate

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[140] DRA Comments at 37.

[141] AT&T Comments at 21.

[142] Disability Rights Advocates Comments at 24.

[143] To the extent that the Commission supports wireless ULTS, low-income disabled and deaf individuals could obtain wireless *service* subsidies through the ULTS program if it is not financially feasible to support service through DDTP.

in the DDTP[144] while federal government statistics estimate that there is a disabled population in California of almost four million people.[145] TADDAC also notes that:

> We are proud of the DDTP's marketing program's ability to generate significant new traffic in field offices….However, much still remains to be done to enhance the program's profile in innercity and rural communities.[146]

The California Coalition offers a proposal that the DDTP coordinate with other public policy programs and make their meetings accessible to DDTP clients and the public through video linkups. DRA supports this recommendation and additional prior proposals for additional outreach and marketing by requiring DDTP to:

- work with the Commission to cultivate and improve relations with community-based organizations (CBOs) and via CTF,
- improve coordination and outreach among the several Public Policy Programs where appropriate[147] by, among other steps, using technology to make the advisory committee meetings more accessible to DDTP clients and the general public through video linkups and working with non-English speaking communities;[148]
- provide more accessible service centers, including mobile service centers.

D. Means testing is not necessary at this time

Some parties support means testing as a way to maintain the program, particularly if new equipment is added to the program. AT&T asserts that "[g]iven that costs may increase if CTAP is expanded to include wireless equipment, it appears unavoidable that means test criteria must be utilized to ensure the longevity of the program."[149] Surewest

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[144] 2003-2005 Consolidated Annual Report, Deaf and Disabled Telecommunications Program, California Telephone Access Program, California Relay Service at 4.

[145] U.S. Census Bureau, American Community Survey Profile, 2003: Population and Housing Profile: California

[146] TADDAC Comments at 10.

[147] California Coalition Comments at 21.

[148] California Coalition Comments at 24.

[149] AT&T Comments at 18.

also supports the implementation of a means test and suggests that it "may be appropriate to create a multi-tiered system that provides discounted TTY service to all DDTP-qualified individuals while at the same time offering discounts on more advance technologies to those who can pass an income-base "means test."[150]

Many parties other than DRA, including the TADDAC, DisabRa, California Coalition, and World Institute on Disability, oppose means-testing as unnecessary and contrary to the program's purpose.[151] As an initial matter, the cost of wireless equipment is not significantly different from that of traditionally supported devices. Indeed, even AT&T admits that "[w]hile these new wireless devices may increase costs, the cost increases will be offset by cost savings associated with the distribution of wireline devices."[152] The California Coalition states that the cost of a TTY is approximately the same as the cost of a text pager, or around $300, and thus, the cost of including wireless devices such as text pagers should not significantly increase the cost of the program.[153] Further, equipment outlays in the DDTP fell from approximately $15 million in 2003-4 to under $8 million in 2004-5.[154] Thus, it should be feasible to expand the program's offerings to include wireless equipment without putting additional pressure on the DDTP budget.

DRA recommends that the Commission, as required by the statute, first study the implications and likely impact of means-testing on the disabled community. DRA notes that the disabled community suffers a disproportionate share of unemployment and low-wage employment[155] and income qualifications derived without regard to impairment (e.g., in the case of ULTS) are inappropriate in the DDTP context. TADDAC also

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[150] Surewest Comments at 8.

[151] TADDAC Comments at 19-21; DisabRa Comments at 30-32; California Coalition Comments at 13-14; WID Comments at 8, 9-10.

[152] AT&T Comments at 17.

[153] California Coalition Comments at 16.

[154] 2003-2005 Consolidated Annual Report, at 14.

[155] U.S. Census Bureau, "Disability Status, Employment, and Annual Earnings: 2002"

explains that the "basis for the program has not been user income or location but rather user disability, thus, the basic premise of the program is different from the other universal service programs."[156] ULTS income criteria are unrelated to disability and are therefore inappropriate as the basis for means-testing for DDTP. The California Coalition emphasizes that "California's deaf and hard-of-hearing consumers should not be forced to choose between a program that provides the latest technology and a program that serves all individuals with disabilities….The DDTP was designed to ensure that Californians with disabilities, regardless of income, have access to the equipment and services they need to communicate with the same ease that those without disabilities can."[157]

E. Vouchers in the DDTP Context

AT&T, Cingular, and the California Coalition all propose implementing a voucher process for wireless equipment. They agree that a voucher process will 1) increase DDTP customer choice, 2) make it easier to add additional equipment to the DDTP program and 3) will reduce DDTP warehousing and distribution costs. Cingular recommends that because "[w]ireless technology changes very quickly with newer devices with more features and capabilities being released all the time,"[158] the DDTP program "[should] utilize some form of rebate process whereby the customer is allowed to choose the carrier and device that best meets his or her needs."[159] The California Coalition also supports a voucher program as potentially generating significant program savings, by eliminating the "millions [that] are spent every year to stock, warehouse, and ship equipment."[160] The California Coalition also explains:

> The move to a voucher system would also simplify the process for adding equipment to the program. Instead of laboriously

[156] TADDAC Comments at 19.

[157] California Coalition Comments at 13.

[158] Cingular Comments at 12.

[159] *Id*. at 10.

[160] California Coalition Comments at 19.

> seeking out and testing specific pieces of equipment and then working to negotiate a contract with each vendor, the DDTP could instead focus on approving more pieces of equipment and letting the consumers decide exactly which ones best fit their needs….the Commission would help get new technology into the hands of deaf and disabled consumers in a timely fashion.[161]

DRA supports the implementation of a DDTP voucher process for wireless equipment. Vouchers will allow DTTP participants with specialized needs the ability to purchase the appropriate wireless equipment for their particular situation directly from the service provider; and the reduction in warehousing/distribution costs for DDTP traditional wireline equipment may lessen the net financial burden to the program. DRA recommends that a wireless voucher subsidy should be a complement to the existing system where equipment that is certified by the program and stored in a warehouse and made available to eligible consumers. The details of a voucher program, including the amount of any such voucher, may need to be resolved in a workshop. AT&T proposes a $50 voucher, for instance,[162] and the impact of such a subsidy on the program's budget would need to be analyzed.[163] A pilot program for a wireless voucher system might be useful.

F. Workshops

DRA proposes that the Commission hold a workshop to explore the issues surrounding expanding the DDTP's technological offerings. DRA suggests that the following topics, at a minimum, should be addressed in such a forum but this is by no means an exhaustive list:

- Whether it is financially feasible to add a wireless *service* element to the DDTP.

[161] California Coalition Comments at 20.

[162] AT&T Comments at 21.

[163] Such an analysis would require an estimate of the likely number of DDTP participants who would utilize a voucher for wireless equipment in lieu of wireline equipment – or in addition to wireline equipment, if that were to be allowed – which is merely one of many questions that should be addressed in workshops.

- Cost for inclusion of wireless devices and equipment to the DDTP.
    - Wireless telephones
    - Wireless devices dependent on broadband access
- Determination of whether and which older products or services should be discontinued with the advent of new technology options.
- Consideration of adding VRS–related equipment to the DDTP.
- Steps DDTP can take to increase the public awareness of its services.
- Possible introduction of vouchers, including creation of a pilot program to test feasibility, subscribership levels, and cost impacts.

V. CALIFORNIA TELECONNECT FUND

DRA notes in its Comments that the CTF could improve its administration, coordination, outreach, and develop ways to support services that are not regulated by the Commission, such as DSL, cable broadband service, and VoIP service.[164] Other parties identify similar issues regarding CTF administration, outreach, and offering of DSL and other non-regulated services. Upon review of other parties' proposals, DRA offers the following additional recommendations to those it offered in its Comments:

- The Commission should reject parties' recommendation to create a Third Party Administrator (TPA) in order to address the perceived jurisdictional issues surrounding DSL provisioning for CTF purposes. Such a proposal is unnecessarily costly and disproportionate to the problem it attempts to resolve.
- The Commission should develop an optional voucher program in order to increase access to advanced services through the CTF.

[164] DRA offered specific proposals to address these issues, including: expansion of CTF Advisory Committee (AC) functions to improve the program, and coordinate CTF funding with other funding sources for equipment, installation costs, infrastructure, etc.; coordination between CTF and DDTP; improving outreach; making more broadband information services easy for CTF-eligible organizations to obtain; and simplification of administrative processes.

- The Commission should reject Verizon's recommendation that CTF support be eliminated for schools and libraries.
- The Commission ahould adopt a CTF benefit calculation methodology that is lagged one year behind the E-Rate calculations in order to prevent unnecessary true-ups and true-downs

A. The CTF and CETF Programs Should Be Coordinated to Maximize Ratepayer Benefits.

DRA notes in its Comments that although the CTF provides subsidies to eligible entities for advanced telecommunications services, the installation and equipment costs may still pose a barrier that prevents entities from even purchasing discounted services through the CTF.[165] CCTPG/LIF also identify a need for funds to assist entities with connecting to advanced services. CCTPG/LIF proposed the use of grants of up to $150 million for the purpose of connecting selected recipients to the advanced services network:[166]

> Providing grants to cover the telecommunications costs associated with allowing selected community based organizations to connect to the advanced services network used by the state's education entities in order to stimulate the development of innovative models for enhancing services in low-income communities using high speed networks. Grants could be provided from repayment of the $150 million borrowed from the CTF fund.[167]

While DRA agrees with CCTPG/LIF that the Commission should consider utilizing CTF funding for this purpose, DRA reiterates that the Commission should also coordinate use of available funds from other sources for installation and infrastructure costs that CTF-eligible entities might incur. Funds from the California Emerging Technology Fund (CETF) might be used to complement the purposes of the CTF

[165] *See* DRA Comments at 45.

[166] CCTPG/LIF Comments, at 3.

[167] *Id.* at 10.

program.[168] Utilizing some of the CETF monies for this purpose would assist in increasing subscribership to advanced services in areas with critical needs.

B. The CTF and DDTP Should Coordinate Outreach

A number of parties suggest that there should be collaboration between the administrative committees for the CTF and DDTP. The California Coalition suggests that the Commission develop a "technology committee" to coordinate ideas on assorted issues, such as compatibility of devices offered through the DDTP equipment program with discounted services.[169]

DRA agrees that the recipients (end users and CTF eligible organizations) of these discounts would benefit from greater coordination of their specific technological needs and access to advanced services. However, DRA does not believe that there is a need for a separate "technology committee." Instead, the Commission could address this issue more efficiently by allowing a member of the Equipment Program Advisory Committee (EPAC) to join the CTF-AC to discuss relevant technology coordination issues at CTF-AC meetings. Even if it slightly broadens the scope of the issues handled by the committee, the CTF-AC meetings are an appropriate venue for discussing and coordinating relevant technology policy matters. As DRA notes in its Comments, the CTF may also benefit from coordinating with the DDTP because it will allow the CTF, among other things, to identify eligible health care organizations that are in need of support.

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[168] Since the CETF funds were allocated to ratepayers as a condition of the merger, ratepayers should be able to participate in deciding how those funds are disbursed and administered and should benefit from those funds.

[169] California Coalition Comments, at 22.

C. The Commission Should Increase Outreach for the CTF Program Through A Pilot Program Operated by a Third Party

AT&T, CCAF, California Coalition, and CCTPG/LIF, and other parties note that there is a need for increased outreach and education about the CTF program, and some offer proposals for doing so.[170]

AT&T notes that "the CTF Advisory Committee is in the process of designing a CTF Marketing and Outreach Strategy to be presented to the Telecommunications Division by the end of the fourth quarter of 2006,"[171] but the details of this CTF marketing proposal are not yet available for review by the Commission and parties. Current outreach efforts have simply not been adequate despite the fact that the CTF has $400,000 of unutilized funding earmarked for marketing purposes. Given the lack of a formal, dedicated outreach program, the Commission should initiate a one-year pilot program through a contract with an appropriate third party nominated by the CTF-AC. This outreach program should be evaluated at the end of the one-year trial period to gauge its effectiveness. DRA also supports the suggestion of CCTPG/LIF that a third party administrator (TPA) with a track record of fiscal responsibility, and experience with low-income communities and community technology would be best situated to reach out and "help increase the number of CBOs that know about and qualify for CTF."[172] However, for the reasons discussed below, DRA opposes any suggestion that a TPA administer the *entire* CTF program.

CCAF proposes that the Commission should provide for a coordinated effort among all the Public Policy Programs in marketing, outreach, and consumer education.[173] Although this is an attractive proposal that could create synergies among CTF, DDTP,

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[170] AT&T Comments, at 23-24; CCAF Comments at 7; California Coalition Comments at 22; CCTPG/LIF Comments at 11.

[171] AT&T Comments at 32-33.

[172] CCTPG/LIF Comments at 11.

[173] CCAF Comments at 6.

and ULTS, it is unclear that such a coordinated marketing effort would benefit the CTF program. Because recipients of CTF support are organizations -- not the individual end users who are the beneficiaries of the other programs such as ULTS and DDTP -- coordinated marketing efforts at booths at community events would not reach the eligible organizations that are the potential recipients of CTF support. The Commission should consider carefully whether such a coordinated marketing effort among the Public Policy Programs would be cost effective and truly benefit each of the programs.

D. The Commission Should Reject Extreme Proposals Such as Eliminating CTF For Schools and Libraries

Several parties, particularly telecommunications carriers currently participating in the CTF program, point out the administrative complexities of the current process of filing for discounts with the federal E-Rate program and the CTF.[174] The process, which AT&T calls "stacking,"[175] involves annual adjustments of school and library CTF benefits to reflect the annual changes in E-Rate support. Under the current reimbursement system, an eligible school or library receives CTF discounts as a complement to, and based upon, its estimated amount of E-Rate funding for the year. Once the school or library receives its *actual* E-Rate funds for the year, the CTF support is then adjusted if the actual E-Rate amount is less or more than the estimated amount. Parties have claimed that this retroactive true-up process is burdensome for claimants and Commission staff alike.

Parties offered a variety of remedies for this complex reimbursement procedure, the most draconian of which is Verizon's proposal to eliminate CTF support of schools and libraries altogether.[176] DRA opposes this proposal, which would essentially punish schools and libraries for receiving funding from E-Rate and/or for having fewer students in the low-income brackets. Verizon claims that school and library districts that are most

[174] Citizens Frontier, AT&T, Verizon, the Small LECs, and Surewest all comment on these problems.

[175] AT&T Comments at 31-32.

[176] Verizon Comments at 33-34.

in need already receive adequate support from E-Rate without CTF, and those that get lower E-Rate funding "are among the wealthiest schools."[177] Although a particular school district may have fewer students eligible for the school lunch program than another district, this does not correlate to a finding that the schools or libraries in that district can easily afford to provide Internet access for students who would not otherwise have access. California school district funding is disaggregated and not primarily based on the local incomes of the children; thus, school lunch program participation levels do not necessarily reflect the amount of budget or funding that the school receives. DRA urges the Commission to retain its existing CTF support for schools and libraries.

Other parties propose a flat subsidy amount to resolve the administrative difficulties of the current system, including the retroactive readjustments. In the case of schools and libraries, this may be an effective approach, but DRA is reluctant to support such a proposal until the details have been worked out regarding the specific flat discounts that would be provided for particular services or bandwidth categories. For example, Citizens Frontier proposes a fixed benefit from the CTF directly to the CTF participant, rather than through the telecommunications provider.[178] This proposal lacks details and is unclear about how exactly the E-Rate funding levels would determine CTF fixed benefit levels. It is also uncertain how this proposal would apply to healthcare organizations and CBOs that do not receive E-Rate support.

AT&T also proposes a flat benefit applied to all classes of recipients with different benefit levels, based upon the E-Rate's school-lunch program eligibility formula.[179] DRA objects to this proposal because as mentioned above, the Commission should not target support to communities based on average local income. Because economically disadvantaged people reside in a variety of income level distribution communities, it is important that the joint support of E-Rate and CTF be focused on organizations that

[177] *Id.* at 34.

[178] Citizens Frontier Comments at 5.

[179] AT&T Comments at 28.

fulfill these needs rather than to broadly categorized geographic areas. Another potential problem with AT&T's sliding scale, as currently proposed, is that it conceivably may provide some recipient schools that have high numbers of school lunch program qualifiers in their districts, with a combined E-Rate and CTF benefit in excess of their total eligible service costs.[180]

The Small LECs and Surewest propose to shift the administrative burden from carriers by "removing carriers from the claims process."[181] Both parties propose the Commission consider a voucher method, "streamlining" the CTF by treating discounts as a matter between the CTF and the end-user customers.[182] While streamlining carrier administration, this approach would shift the administrative burden to the eligible entities such as schools and libraries, without clear benefits. It is not clear that the total administrative burden would be reduced under such a proposal; on the contrary, documentation for each customer would have to be handled separately, rather than in bulk for all carriers' CTF-eligible customers. For these reasons, DRA does not believe that a voucher system would be useful or necessary for administering the CTF in the context of schools and libraries.

Moreover, there is an important distinction between the broad, mandatory voucher proposal of the Small LECs and SureWest, and the small-scale, ***elective*** voucher proposal for healthcare organizations and CBOs that DRA made in its Comments. DRA proposes the elective voucher method for the purpose of allowing healthcare organizations and CBOs that require lower cost, lower bandwidth service than T-1 lines, such as DSL, cable broadband, or another lower bandwidth service locally available to receive funds and subsidies for such services directly from the CTF.[183] This elective voucher option would

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[180] Because AT&T's proposed flat-rate CTF subsidy would be based on school-lunch program participation levels and not conditioned upon federal E-Rate amounts that the schools receive, a school with a high number of school-lunch program participants would receive a large CTF flat amount, but would also qualify for a large amount of federal E-Rate support.

[181] Surewest Comments at 8.

[182] *Id*. at 8; Small LECs Comments at 8.

[183] In contrast to the need that healthcare organizations and CBOs have for vouchers, the elective voucher

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issue funds or support to the eligible healthcare organizations/CBO directly and resolve the issue of interacting with carriers reluctant to offer DSL through the CTF because they fear Commission regulation over services that are not currently regulated by the Commission.[184] There may be some increased administrative burdens for the CTF-eligible organization under this elective voucher system, because these entities would submit broadband bills to the CTF; however, this method provides a technologically neutral way to make discounted services such as DSL available through the CTF.[185]

E. The Commission Should Adopt a Lagged CTF Benefit Calculation for Schools and Libraries

In response to these parties' proposals to simplify the administrative process for schools and libraries, DRA offers an alternative method to address the stacking problem. This proposal was not included in DRA's Comments but is the result of reviewing other parties' concerns. DRA proposes shifting by one year the E-Rate benefit used to calculate the remaining CTF support for schools and libraries; rather than calculating the CTF benefit on the *current* year's *imputed* E-Rate, and then having to go back and true up or down, the *previous* year's *actual* E-Rate should be used instead. In this way, when the CTF contribution is calculated, the E-Rate contribution share to the particular school, school district, or library used as a basis for the CTF calculation would already be a *known quantity.*

There would no longer be a need to readjust the CTF calculation, reducing administrative costs for carriers and the Commission alike. The net benefit to the CTF-

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system is unnecessary for schools and libraries because schools and libraries typically purchase larger bandwidth volumes, T-1s or greater bandwidth, and therefore they do not purchase DSL, cable modem, or functionally equivalent services.

[184] DRA Comments at 51. As DRA explained, a voucher might resolve some of these issues, because the healthcare organization/CBO could receive subsidies or funds directly from the CTF, which the healthcare organization/CBO could apply to certain approved services, such as DSL, T-1s, or cable modem services.

[185] Although there may be a slight increase in administration required by Commission staff to process the elective vouchers of healthcare organizations and CBOs, such burdens are much less than would be required in a mandatory voucher system such as proposed by Surewest and the Small LECs.

eligible organizations would be virtually the same, summed over a period of years; only the transition year in which the organization received the exact same CTF benefit two years in a row would there be a possible discrepancy.

New CTF recipients should use the statewide average E-Rate for the previous year as a proxy to calculate the CTF funding amount for the first year only,[186] but capped at a level so that the total E-Rate plus CTF receipts do not exceed their total eligible service costs for their first year. For the one year of transition to the lagged reimbursement system, current school or library E-Rate recipients that already receive CTF support would receive the same amount of CTF support for two years in a row. Thereafter, the CTF support calculation would be based on the actual E-Rate support from the previous year.

F. Third Party Administrator is Not Necessary

AT&T, SureWest, and the Small LECs argue that a Third Party Administrator (TPA) for the CTF program should be established primarily so that it or its affiliates can provide CTF-discounted broadband information services, or what it calls "non-telecommunications" services without fear of subjecting themselves to Commission regulation. SureWest and the Small LECs present the same argument with little support. CCTPG/LIF also support a TPA, although they add that such administration may facilitate a more responsive program.

DRA believes that establishing a TPA for administering the entire CTF program may be too costly without providing sufficient offsetting benefits. Currently, the Commission's Telecommunications Division administers the CTF program and processes the entities' applications as well as reimbursements to the service providers. The establishment of a TPA could result in greater administrative complexity and bureaucratic layers. The primary reason that AT&T proposes a TPA is to "encourage voluntary participation" from service providers that are currently not regulated by the

[186] The statewide average E-Rate is already calculated and used to comply with SB 1102 provisions affecting schools and libraries that apply for CTF support, but do not apply for E-Rate support.

Commission.[187] For example, AT&T opines that service providers would be more willing to submit requests and receive benefits or reimbursements from a TPA, as opposed to the Commission.[188] However, as DRA suggested, the same issues regarding the Commission's authority to regulate certain services such as DSL and cable broadband services could be addressed by establishing an elective voucher system.

Specifically, DRA proposes a far simpler and less costly mechanism, an "elective voucher" for eligible healthcare organizations and CBOs to obtain CTF discount reimbursements for broadband information services directly from the CTF, rather than in the form of a discounted rate from the carrier or provider on the bill.[189] The carrier or provider would not be involved in, or even aware of, the discount or rebate transaction between the eligible organization and the CTF. This solution addresses the jurisdictional issues, and would only require minor additional staffing to administer these vouchers. Thus, there is no need to establish an entirely separate TPA to administer the CTF.

CCTPG/LIF also support a TPA, stating that a TPA "will also remove carriers' perception that providing discounts for DSL will lead to regulation of that service" and will allow it to identify low-income communities.[190] As mentioned above, DRA believes that, instead of a TPA, an independently run outreach program targeting CBOs and healthcare organizations will more effectively alert organizations to the existence and benefits of the CTF.

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[187] AT&T Comments at 29.

[188] Although the Commission in its CTF Administrative Letter No. 13 (March 9, 2006) has specifically stated that the CPUC does not intend to regulate a provider simply because it participates in the CTF or receives CTF discounts, many service providers still appear to be reluctant to provide through the CTF those services that they contend are not subject to the Commission's regulation.

[189] DRA Comments at 51-52.

[190] *Id*. at 11-12.

VI. PUBLIC POLICY PAYPHONE PROGRAM AND PAYPHONE ENFORCEMENT PROGRAM

A comprehensive review of the Public Policy Payphone Program (Quad-P), the Payphone Enforcement Program (PEP),[191] and the industry is necessary to fully address the Commission's policy objectives for payphones. These objectives include supporting public health, safety, and welfare.

Such a comprehensive review of the direction of the payphone industry, and the role and organization of the Commission payphone programs, did not emerge from the Opening Comments of the parties. There was general consensus on the current problem of declining numbers of payphones, but the end point of this decline still remains a matter of conjecture. Aside from the general agreement on modifying the PEP to rely upon an "800" number for customer reporting of immediate problems, there was little unified opinion on the need for, or the organization and the funding of, the two programs. DRA addresses the issues and proposals raised by other parties, and has revised its own recommendations in some areas as a consequence. DRA's new or modified proposals are:

- If the Commission adopts DRA's workshop proposal, DRA recommends that the workshop address or consider:[192]
  - reasons for the declining number of payphones;
  - the prospects for the industry hitting a stabilization point in some core locations;
  - the development of criteria for Commission priority locations of payphones (economically viable or Public Policy Payphones (PPPs));
  - defining basic procedures for installing or removing PPPs;
  - establishing a method for timely PPP reimbursement payments to PSPs;
  - assessing costs of installing and maintaining PPPs;

[191] Some commenters have referred to this program as the "Payphone Service Providers Enforcement Program" ("PSPEP"); for the purposes of its comments, DRA treats these terms as synonymous.

[192] This is not an exhaustive listing; rather this is a starting point.

- developing ways to cost-effectively tailor enforcement to correct problems and inappropriate customer treatment; and

- The Commission should consider instituting a registration or certification process for PSPs in California.
- The Commission's statutory authority over payphones, and over Public Policy Payphones in particular, needs to be strengthened in order to meet the Commission's goals for its two payphone programs.
- The Commission should consider steps to maintain and reform the two payphone programs and the Payphone Service Providers Committee (PSPC).[193]
- The Commission should consider a shift of funding for programs from the current per-payphone-line charge to a telecommunications end-user surcharge.

A. The Need For A Workshop Or Study To Fix The Payphone Programs

In response to the OIR's question on the current and forecasted state of the payphone market,[194] DRA explained its belief that the conclusions the Commission reached in 1998 with regard to the inability of the marketplace to replace public policy payphones or to satisfy the Commission's public policy goals are still valid today.[195] DRA also recommended that, in the absence of a marketplace that could satisfy these public policy goals of providing telephone service at unprofitable locations in the interest of public health, safety, and welfare, the Quad-P be reformed in order to better meet those goals.[196]

The California Payphone Association (CPA) posits two approaches to viewing payphone services in the context of the Commission's objectives.[197] One approach is to focus on a discrete set of payphones that serve the public health, safety, and welfare

[193] Some commenters have referred to this committee as the "Payphone Service Providers Enforcement Committee" ("PSPEC"); for the purposes of its Comments, DRA treats these terms as synonymous.

[194] OIR at 22.

[195] DRA Comments at 67-68.

[196] DRA Comments at 70-71.

[197] CPA Comments at 15.

objectives of the Commission, regardless of economic viability. The other approach is to recognize the much greater number of payphones being operated profitably that already serve these same Commission objectives, and consider how to retain them. While DRA supports the maintenance and strengthening of the Quad-P to assure that Commission objectives are met, it also agrees with CPA's point regarding for-profit payphones, and supports a workshop or study to better understand the dynamics of the payphone industry's decline, to develop criteria for identifying locations where its services are most needed, and to explore possible means to stabilize it.

In response to the Commission's question "two" in the OIR -- about the current and forecasted state of the payphone market[198] -- parties' Comments were grim. CPA laments wireless competition, declining revenues per payphone, and declining payphone line counts.[199] AT&T states, "(t)here is no indication that the forecast for this market looks any different from its current state."[200] Despite the pessimistic tone of the Comments, it is likely that some core base of payphones will continue to be used regularly and earn a profit. In the spirit of CPA's "second approach" above, DRA believes it would be valuable for the Commission to further explore ways to stabilize that core base, especially where public health, safety, and welfare are of concern. However, in the absence of market conditions that could satisfactorily meet the Commission's public policy objectives, it is *essential* that the Quad-P be reformed and strengthened so that it can fulfill its original mandate.

DRA hopes to present to the Commission and other interested parties an analysis of data it is currently collecting on the geography of payphone use, areas of decline, and local incomes. If the Commission conducts a workshop as DRA recommends, the agenda should include: analysis of the reasons for the declining number of payphones; prospects for the industry hitting a stabilization point in some core locations;

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[198] OIR at 22.

[199] CPA Comments at 13-14.

[200] AT&T Comments at 36.

identification of any new criteria for Commission priority locations of payphones (economically viable or PPPs); basic procedures for installing or removing PPPs; an effective PPP reimbursement system for PSPs; an assessment of payphone installation and maintenance costs; and cost-effective ways to tailor enforcement to correct problems and inappropriate customer treatment.

DRA recommends that the workshop process be structured in such a way that it results in the provision of informed input to the Commission on the key issues that, from a practical standpoint, need to be resolved in order for the Commission to make the reforms necessary to restructure the payphone programs so as to more effectively and efficiently meet their statutory and public policy goals. Accordingly, DRA recommends that the workshop process be organized into a sequenced fashion. The Commission should start by examining two categories of data:

- Data concerning the current state of the payphone market in California.
- Data on payphone violations as reported by the Commission's payphone inspectors.

Access to data of the current state of the payphone market in California would enable interested parties and the Commission staff to provide (1) systematic, detailed, and empirically-informed analyses of the reasons for the declining number of payphones, and, based upon this data, (2) an assessment of the future state of that market, including prospects for the industry hitting a stabilization point in some core locations; and (3) the potential impact of these changing market conditions on the continued existence and availability of payphones in those core locations.

The Commission possesses data on payphone violations. This data could be provided to the parties, subject to whatever proprietary concerns might exist, prior to the commencement of the workshop. Parties who wish to submit additional information should likewise do so prior to the workshop.

The second step in the sequence would address reform of the Quad-P program. Its purpose would be twofold: first, to assist the Commission in developing appropriate criteria for identifying those areas in the state where there is a priority need for

payphones that currently is not being met by the payphone market; and second, to assist the Commission in identifying and implementing specific reforms to the Quad-P program that would enable that program to more effectively and efficiently address those needs. The third step would focus on reform of the PEP program.

B. The Public Policy Payphone Program (Quad-P) Should Be Reformed, Not Suspended Or Eliminated.

1. The Quad-P Serves An Important Public Need And Should Not Be Eliminated.

Several parties have suggested or endorsed the recommendation that the Quad-P be suspended or eliminated. While Citizens/Frontier voices support for the recommendation outlined in the 8/10/05 letter from Steve Fetzer, PSP Committee chair, that the Commission place a temporary moratorium on the PPPs, AT&T, Verizon, and CPA are unequivocal: the Quad-P should be eliminated.[201] While CPA's recommendation on the final disposition of the Quad-P is somewhat ambiguous, it appears to support the position, expressed by Mr. Fetzer in his June 26, 2006 letter to Consumer and Public Safety Division (CPSD) Director Clark, that both the Payphone Service Provider Enforcement and Quad-P Programs should be eliminated.[202] CPA argues that the Quad-P "has been unsuccessful and has no prospects for success in its current form," and recommends that the program – and its funding - be terminated altogether, and that the PSP Committee be disbanded.[203] AT&T, for its part, argues that "numerous obstacles" have rendered the placing of PPPs at appropriate locations

[201] Citizens/Frontier Comments, at 5-6; AT&T Comments, at 33; Verizon Comments, at 3, 34; and CPA Comments, at 18. Verizon and AT&T "hedge their bets" in this regard; while both support the elimination of both payphone programs, they also endorse the proposal (contained in Mr. Fetzer's earlier (8/10/05) letter to the Commission) for a temporary moratorium on the Quad-P.

[202] CPA Comments at 7, 19. However, CPA also recommends that, rather than eliminating the Quad-P, responsibility for it merely should be transferred to the Commission's Telecommunications Division. *Id.* at 19.

[203] CPA Comments at 18-19.

"unattainable."[204] And Verizon, citing the substantial drop in the number of PPPs in California since 1990, also concludes that the Quad-P should be eliminated.[205]

While DRA agrees with *some* of the points raised by these commenters, it disagrees with the implications for the program they draw from them. For example, while DRA agrees with CPA that the Quad-P thus far has been largely unsuccessful in achieving its stated goal,[206] it disagrees with CPA's conclusion that the program therefore should be eliminated. And while DRA recognizes the obstacles to the achievement of that goal that AT&T cites, it disagrees with AT&T's conclusion that these obstacles render this goal "unattainable."[207]

Rather, DRA believes that these problems, such as the decline in the payphone market, the decrease in the number of PPPs, and the lack of an efficient and workable administrative structure for the program, demonstrate the need to reassess the program in terms of its goals, and to reform it so that it can better achieve those goals, given technological, regulatory, and market changes. Furthermore, there is no need to implement a formal "moratorium" on the Quad-P, as such a moratorium is effectively what exists today, given the lack of a procedure for the placement of Public Policy Payphones, the lack of a mechanism to reimburse Payphone Service Providers for the installation, operation, and maintenance of existing (and new) PPPs, and the decrease in the number of payphones (including PPPs) statewide. The task, rather, is to address these problems by reforming and strengthening the program, as as well as by assessing in a more systematic fashion the continuing public need for payphones, and determining the how this need can most efficiently and effectively be met.

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[204] AT&T Comments at 34.

[205] Verizon Comments at 25-26.

[206] CPA Comments at 13; DRA Comments at 64.

[207] AT&T Comments at 34.

2. Payphones Continue to Fulfill an Important Public Need

In support of their argument for the elimination of the Quad-P, both AT&T and CPA point to what they allege is the diminished use of, and public need for, payphones. CPA claims that "the real need for Public Interest [sic] Payphones has turned out to be very limited," and that "the few instances where a subsidized payphone really is needed for the public safety or welfare" occur mostly in small rural locations that "[lack] adequate access to the public telecommunications network." AT&T asserts, in passing, that payphones play a "nominal role" in today's society, and that "the use and practicality of public policy payphones have diminished."[208] However, neither party supports its assertions with any evidence. And Verizon, in reaching the conclusion that "the public policy payphone programs have become obsolete and the Commission should … consider their elimination," bypasses the issue of public need entirely.[209]

In this context, the conclusions reached by the Commission in D.98-11-029 bear repeating:

> Parties have not substantiated that telephone service will continue to be available at unprofitable locations to satisfy public health, safety, and welfare needs. Nor have they convinced us that the marketplace will replace the existing public policy payphones or fulfill the public policy objective in public health, safety, and welfare.[210]

Given the declining state of the payphone market -- a development acknowledged by AT&T and CPA as well as DRA – the Commission's conclusions in this regard are all the more salient. Given the lack of evidence to the contrary – and CPA and AT&T certainly have not provided any such evidence – payphones continue to fulfill an important public need – that of "providing payphones to the general public in the interest of public health, safety, and welfare at locations where there would otherwise not be a

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[208] CPA Comments at 18; AT&T Comments, at 33, 36.

[209] Verizon Comments at 34-36.

[210] D.98-11-029, 1998 Cal. PUC LEXIS 753, *16-17, as cited in DRA Comments at 67-68.

payphone."[211] In view of that market decline, and the disappearance of large numbers of the state's for-profit payphones, this need has, if anything, become more pressing. DRA agrees with TURN and the National Consumer Law Center (TURN/NCLC) that payphones continue to serve an important function in the achievement of universal service, and that there continue to be situations in which "a pay phone can be essential or even critical to an individuals' [sic] safety."[212] DRA also agrees with TURN/NCLC that "the Commission has a duty to ensure [that] this critical back-up functionality is available and [that] the pay phone programs should be used appropriately to accomplish this goal."[213]

CPA asserts that there is a "significant trend" in the payphone market toward preserving the existing payphone base in locations where potential customers are unlikely to carry a cell phone or other wireless communication device, and concludes that "[p]ayphones are more likely to be retained in poorer neighborhoods in inner cities and out-of-the-way places where wireless service is unreliable."[214] CPA believes that, despite the general decline, there will still be "pockets" of the state where payphones will survive, and that, in any case, the Commission's goal of providing payphones to the general public in the interest of public health, safety, and welfare is best met by "improving the economic prospects for California's entire payphone base," rather than by including a supplementary Quad-P targeted at meeting that public need.

While DRA agrees that some core base of payphones is likely to continue to be profitable and therefore survive, this is by no means true for all those payphones currently meeting ***critical public needs***. In any event, the payphone market, in its current state of decline, cannot be relied upon to meet those needs.

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[211] OIR at 7.

[212] TURN/NCLC Comments, at 26.

[213] *Id.* at 27.

[214] CPA Comments at 14.

Furthermore, while CPA does acknowledge that public dependence on payphones is likely to increase in poorer neighborhoods as a result of the deregulation of prices for basic service, the conclusions it draws based upon this assumption are questionable. Assuming that CPA's assertion is correct, in order to determine whether the increased need for payphones in those neighborhoods can be addressed, it is essential that the Commission identify the characteristics of these neighborhoods. For example, the Commission needs to know precisely where those neighborhoods *are*, and assess to what extent that need is not currently being met by payphone providers. In its Comments, CPA apparently is assuming that the current market, despite its decline, nevertheless can somehow be counted upon to meet the increased need in those poorer neighborhoods. While CPA's assumption about the results of deregulating basic service prices is plausible, DRA finds CPA's contention that the market will take care of everything to be highly questionable.

While the Commission may not yet have systematic data on the public need for payphones in various geographical areas within California, or among different demographic and income groups, this is precisely the reason why DRA has recommended that the Commission conduct a workshop or study to examine the payphone market.[215] One of the purposes of this workshop would be to identify the characteristics of those locations in the state where "existing payphones may need to be designated as PP payphones," and where "the installation of PP phones is in the interest of public health, safety, and welfare."[216]

[215] DRA Comments at 57.

[216] *Id*. at 71.

C. The Payphone Enforcement Program (PEP) Should Be Maintained But Restructured

1. The PEP should be efficient, targeted, documented, and address problems

Several commenters claim that the inspection program has not been structured effectively.[217] CPA, relying largely upon the most recent quarterly report of the Payphone Service Providers Committee, asserts that "the PSP Enforcement program is able to inspect payphones only for compliance with signage and call routing requirements."[218] AT&T alleges that "there is no evidence to suggest that tariff and regulatory compliance among payphones has been achieved as a result of this program…."[219] Based upon these assertions, AT&T and Verizon recommend that inspections – or the Enforcement Program itself – are unnecessary, and should be terminated.[220]

Some assertions made by CPA and AT&T with regard to payphone inspections, and the effectiveness of the enforcement program in general, are unfounded. First, the claim advanced by CPA that the PEP is only able to inspect payphones for compliance with signage and call routing requirements is erroneous. Despite the statement in the PSP Committee's quarterly report to which CPA refers, the Oracle-based database that the Commission uses to track the results of its payphone inspections reveals that, in addition to violations related to signage and call-routing, PEP inspectors also inspect – and cite – payphones for dial tone, operability, overcharging, safety, carrier access and directory assistance violations, among others.[221]

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[217] Citizens/Frontier, CPA, AT&T, and Verizon all commented on the PEP.

[218] CPA Comments at 13.

[219] AT&T Comments at 36.

[220] Verizon Comments at 34, 35; AT&T Comments at 33, 34, 36.

[221] The payphone enforcement database, operated by Commission staff over an Oracle platform, consists of payphone ANI (automated number identification), physical location, payphone owner and contact information, telephone carrier providing the payphone access line and date of most recent data supplied. This information is supplied monthly in electronic format by all telephone carriers which provide pay telephone access lines in California. This enforcement database is also used to generate work orders for payphone inspectors, including individual inspection sheets completed for each payphone inspected; enter

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Second, AT&T provides no basis for its allegation that "there is no evidence to suggest that the PEP has achieved any compliance by payphone providers."[222] The agenda package regularly provided to each PSP Committee member in advance of its quarterly meeting contains, among other things, a "Payphone Inspection Report" that lists, on a weekly basis, the number of inspections completed for that week, the number of violations found, and the number of phones with violations.[223] This data reveal that the average number of violations per payphone decreased from a high of over 2.25 violations for the first quarter of 2003 to a little over 1.5 violations during the third quarter of 2005. While this data also reveal some short-term fluctuations, the recent overall trend is downward.[224] This evidence suggests that, over time, the PEP may indeed have been successful in achieving regulatory compliance.

Another common theme voiced in several parties' Comments follows the point made by Steve Fetzer in his oft-quoted letter to the CPUC on behalf of the PSP Committee, to the effect that most violations between 2001 and 2005 "have been signage related," and that these violations generally have "been corrected by the payphone operator through its regular [sic] scheduled maintenance activities before it has received notice of the violation" from PEP inspectors.[225] While DRA acknowledges that the existing inspection program may not always have been timely in reporting payphone violations to payphone operators, this problem was largely rectified in January 2006 by providing inspectors with the technology necessary to input the results of their inspections directly into the Commission's reporting system.

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results of the completed inspection; and issue automated letters of violation to payphone owners where violations are found during inspection.

[222] AT&T Comments at 36.

[223] *Meeting of the Payphone Service Providers Committee, June 27, 2006,* "PSPE Discussion," "Payphone Inspections Report," at 22.

[224] *See* Attachment A to these Comments.

[225] Letter from Steve Fetzer, chairman, PSPC, to the CPUC, 8/10/05, included as Exhibit B of CPA's Comments.

DRA strongly disagrees with the conclusion reached by CPA, AT&T, and Verizon that the solution to past enforcement problems is to terminate the PEP and disband the PSP Committee. The Commission should instead identify the reasons for the past limitations of the enforcement program and its inspection regime, clarify the goals and purposes of these inspections, and make the reforms necessary to ensure that the program more effectively and efficiently fulfills its statutory goals.

The PEP has contributed to enforcing tariff and regulatory compliance by Payphone Service Providers, and the need to oversee such compliance with the Commission's payphone requirements – and the concomitant importance of maintaining the consumer safeguards that the program is intended to provide – continue.[226]

DRA supports a shift in emphasis from random inspections to a more targeted emphasis on pinpointing problems and inappropriate customer treatment. Problems of signage and payphone operability may be readily addressed by PSP field staff. Operability of payphones is indeed in the clear interest of PSPs. Other problems, such as overcharging customers or providing required access numbers (e.g. 800, 1010, and 711), may not be in the PSP's interest to fix. These services could potentially even be deliberately made unavailable, and the PEP must be equipped to investigate such problems. PEP staff are currently able to track patterns of violations in the Oracle database, and share information from the inspectors, in order to pinpoint problem payphones or PSPs, and to then follow up. Customer-reported problems via the "800" number reporting system should be integrated into the database as well.

Adequate staff to review complaint and violation data for problems and to follow up is still needed. DRA anticipates such staffing will be smaller than that employed for conducting random inspections. Furthermore, data collection, related to both consumer complaints and inspections, to determine patterns of abusive PSP practices should continue. Such data would be valuable if the Commission proceeds to improve the payphone programs as DRA has recommended.

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[226] DRA Comments at 68.

2. The Commission should consider instituting a registration or certification process for Payphone Service Providers (PSPs) in California, along with a data collection system

Another general consensus in Comments was that a transition to a customer-reported enforcement system, relying on an "800" number for complaints to CPSD about payphone problems, would be more cost-effective than random inspections. While this might be the case, DRA cautions that any increase in cost effectiveness could be at the expense of the Commission's ability to track and investigate more systematic problems or trends in provider compliance, such as PSP practices that deceive or defraud payphone users, use deceptive routing, or fail to provide refunds. Given such problems, it is vitally important that the Commission have an effective enforcement mechanism. In addition, enforcement staff must have the means to identify patterns of problems and inappropriate customer treatment and go after them; the "800" number complaint line must therefore be tied to a data tracking system that can identify problems and deliberately abusive practices.

DRA recommends that the Commission, perhaps with input from the workshop on the problems facing the California payphone industry, require some form of registration or certification by PSPs, as other states have done.[227] In its Comments, DRA urged the Commission to "consider seeking statutory authority for basic regulatory tools such as the ability to fine PSPs and to require registration or certification of PSPs."[228] DRA notes that existing statutes may already give the Commission that authority. P.U. Code Section 742(a), for example, mandates that:

> The commission shall, by rule or order, adopt and enforce operating requirements for coin-activated and credit card-

[227] According to recent data compiled by CPSD staff about the extent of other states' regulation of payphones, at least 25 of those states already require some form of certification and/or registration by PSPs. See Attachment B to these comments, which is a spreadsheet prepared by CPSD staff that provides information on other states forms of registration or certification process for PSPs ("Other states regulation of payphones_CPSD").

[228] DRA Comments at 69.

> activated telephones available for public use owned or operated by corporations or persons other than telephone corporations.

CPA observes that "The ultimate sanction available to Commission Staff through the PSP Enforcement program always has been to order the local exchange carrier ("LEC") to terminate service to an offending PSP for noncompliance with LEC tariff conditions."[229] In fact, the Commission in D.90-06-018 adopted a "two-phased approach to enforcement," the second phase of which would "provide a long-term enforcement plan" to address rule violations.[230] That "long term enforcement plan" included mandatory registration of PSPs, and fines on PSPs that violated requirements were proposed as a source of funding for the "long term enforcement plan."[231] DRA recommends that the Commission consider these and other enforcement mechanisms to ensure the effectiveness of a PEP and a Quad-P that are enhanced as proposed by DRA.

While DRA understands the circumstances that have motivated the Commission's shift to a new, more cost-effective "800" number complaint system, DRA also believes that the effectiveness of this new system needs to be reviewed and evaluated, and that it must be provided with sufficient inspection and other support staff to enable it to track, identify, and correct, violations of Commission rules and the consequent harm to consumers.

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[229] CPA Comments at 17.

[230] D.90-06-018, Appendix A at 73 (or August 19, 1988 Workshop Report at 7). Appendix A consists of a May 11, 1989 Settlement Agreement adopted by the Commission with modifications. D.90-06-018 at OP 1. That Settlement Agreement states that "The enforcement program recommended by the workshop in its August 19, 1988 report to the Commission shall be adopted." D.90-06-018, Appendix A at 22. The workshop report itself is attached to the Settlement Agreement in Appendix A of D.90-06-018, and is intended to "represent[] the consensus views and recommendations of the Customer Owned Pay Telephone (COPT) Workshop participants." D.90-06-018, Appendix A at 67 (or August 19, 1988 Workshop Report at 1).

[231] D.90-06-018, Appendix A at 73 (or August 19, 1988 Workshop Report at 7).

D. Other Proposals By Parties

1. The CPA Proposal to fund payphone programs through the "PUC Reimbursement Fee" should be rejected

The question of funding the payphone programs drew a general consensus among parties that the per-line surcharge on payphones is unsustainable so long as the number of payphones is shrinking.[232] A more broad-based funding source was generally preferred if the program is to continue. DRA recommends that the current funding mechanism for the Quad-P and PEP be replaced by an all-end-user-surcharge, similar to the Commission's other Public Policy Programs.[233] CPA, on the other hand, proposes "to fund the PSP Enforcement program through the Public Utilities Commission Reimbursement Fee, collected by utilities from all customers, rather than a surcharge applied only to the COPT access line."[234]

DRA continues to recommend that the funding base for the payphone programs be changed to mirror that of the other Public Policy Programs to provide a more stable funding base, improve sustainability, and reduce the administrative burden on payphone providers and Commission staff.[235] The Legislature intended the PUC Reimbursement Fees to fund the Commission itself,[236] and the Commission collects those fees from all service providers regulated by the Commission, such as those in the water, electric, gas, and transportation industries.[237] Payphone service is a telecommunications service, and the programs supporting it are part of California's universal service initiatives for telephone service. It is therefore only appropriate that end-user surcharges on intrastate

[232] CPA Comments, at 17, AT&T Comments, at 34, DRA Comments at 71-63.

[233] DRA Comments at 73.

[234] CPA Comments at 17-18.

[235] *Id.*

[236] P.U. Code Section 401(a).

[237] *See* P.U. Code Sections 421(a) and 431.

telecommunications billings, a method that has been funding and should continue to fund other universal service programs, should also be used to fund the payphone programs.

2. CPA proposes that AB 140 rural infrastructure grants could be used for funding the Quad-P Phones

While CPA recommends dissolution of the Quad-P based on its perception of the ineffectiveness of the program, it proposes that the Commission use the Rural Grant Program, established pursuant to P.U. Code Section 276.5, to fund those "few instances where a subsidized payphone really is needed for public safety or welfare – and cannot be supported by a local agency of some kind."[238] DRA's reading of Section 276.5(b), is that this grant program is for telecommunications infrastructure, and could only be used for infrastructure related to the installation of a Quad-P phone, but not for the recurring costs of operating and maintaining the payphone.[239] In addition, there are population criteria that would make these grant funds accessible only in rare circumstances.[240] Finally, the statute setting up the Rural Grant Program requires that funding for the program itself be taken out of the CHCF-A and/or the CHCF-B,[241] both of which are Public Policy Programs funded through end-user surcharges. It makes more sense to establish an explicit end-user surcharge for the payphone programs, rather than to indirectly fund one of those programs through the end-user surcharges imposed for the CHCF-A and the CHCF-B.

E. Conclusion

DRA has explained that the Commission's payphone programs need to be repaired and reformed so that they more effectively meet their statutory and public policy goals. In the absence of systematic evidence to the contrary, and in view of both the declining trend in the California for-profit payphone market and the concomitant reduction in the

[238] CPA Comments at 18.

[239] P.U. Code Section 276.5(b)

[240] *Id*.

number of designated public policy payphones in California, DRA believes that it is more important than ever that the Commission ensure that, in the midst of increasing technological, regulatory, and market changes, the public need for payphones is met. DRA recommends the Commission hold workshops on the issues identified in its recommendations in this section, and urges adoption of its other recommendations in order to accomplish the goals of the payphone programs.

VII. CONCLUSION

For the foregoing reasons, DRA respectfully requests that the Commission adopt its recommendations here and in its Comments.

Respectfully submitted,

/s/ JANE WHANG

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[241] P.U. Code Section 276.5(a).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**Reply Comments of the Division of Ratepayer Advocates on the Order Instituting Rulemaking On Telecommunications Public Policy Programs**" in **R.06-05-028** by using the following service:

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Executed on September 15, 2006 at San Francisco, California.

/s/ MARTHA PEREZ
Martha Perez

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